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FCC Record

A comprehensive compilation of decisions, reports, public notices and other documents of the Federal Communications Commission of the United States.

FEDERAL COMMUNICATIONS COMMISSION

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Federal Communications Commission Record

Volume 7
Issue 8

Table of Contents

Table of Cases..... i

Table of FCC and Delegated Authority Numbers..... iv

Table of Docket Numbers..... vi

Table of Rulemaking Numbers..... vii

Table of Localities..... viii

Table by Subject Matter..... ix

Table by Statutory and Rule Provisions..... xi

Decisions, Reports, Memorandum Opinions, Orders, and Other Selected Material..... 2249

Federal Communications Commission Record

Table of Cases
Volume 7
Issue 8

Case Name	Page
ACC Long Distance Corp.	2289
AT&T Communications	2367
AT&T Communications	2342
AT&T Communications	2353
Adams Telegraph Company, Inc.	2265
Advisory Committee - Low Earth Satellite Services	2370
Advisory Committee on Advanced Television Service	2335
Alascom, Inc.	2308
Alaska Telephone Association	2332
Amendment of Part 15 - Television Decoder Requirements	2279
Amendment of Part 15 - Auditory Assistance Devices	2256
Amendment of Part 2 - Low-Earth Orbit Satellites	2361
Amendment of Part 22 - Domestic Public Cellular Service	2449
Americall Corporation	2309
American Message Centers	2250
American Telephone & Telegraph Co.	2341
Ameritech Operating Companies	2333
Answer Fort Smith, Inc.	2249
Artdex Computer Corporation	2401
Astoria Cruise and Charter	2392
Bell Atlantic Telephone Companies	2336
Communications Satellite Corporation	2339
Cook Inlet Radio Partners, L.P.	2330
Crystal Clear Communications, Inc.	2299
Emision De Radio Balmeseda, Inc.	2363
Fee Decisions of the Managing Director	2414
Fifth Interim Report on Advanced Television Service	2360
Florida Cellular Telephone Company	2340
GE American Communications, Inc.	2337
Golden Corners Broadcasting, Inc.	2301
Greater Utica-Rome TV Services, Inc.	2252
Hooper, John B.	2391
IDB Communications Group, Inc.	2263
International Telecommunications Corp.	2311
Jaybar Communications	2375
KFC USA, Inc.	2397
LRB Broadcasting	2291
Latelco Partners, Ltd	2262
License Renewal Announcement Requirements	2284
MCI Telecommunications Corporation	2288
MCI Telecommunications Corporation	2312
McIlraith, Thomas J., and Nancy A.	2390

Case Name	Page
Micronet, Inc.	2373
Midyear 1986 Access Tariff Filing	2344
Mississippi Valley Broadcasters, Inc.	2354
National Exchange Carrier Association, Inc.	2364
National Teleservices, Inc.	2251
North American Broadcasting Co., Inc.	2345
Northland Telephone Systems, Ltd.	2306
Outage Reporting Requirements	2359
Permissible Services - U.S. International Satellite Systems	2313
Prime Portable Manufacturer, Inc.	2399
Rocky Mount Broadcasting	2297
Sable Community Broadcasting Corporation	2356
Schifsky, Michael W.,(Mrs.)	2393
Seven Seas Communications, Inc.	2310
Skidelsky, Barry (ERRATUM)	2329
Southwestern Bell Telephone Company	2334
TRT/FTC International, Inc.	2304
Table of Allotments, FM, Bismarck, ND	2380
Table of Allotments, FM, Boone and Emmetsburg, IA	2347
Table of Allotments, FM, Byrdstown, TN	2324
Table of Allotments, FM, Celina, Watertown and Baxter, TN	2278
Table of Allotments, FM, Clarinda, IA and Maryville, MO	2318
Table of Allotments, FM, Eatonville, WA	2386
Table of Allotments, FM, Fairfield and Norwood, OH	2377
Table of Allotments, FM, Gladwin, MI	2269
Table of Allotments, FM, Goldendale, WA	2316
Table of Allotments, FM, Great Falls, MT	2412
Table of Allotments, FM, Greenacres, CA	2277
Table of Allotments, FM, Greenwood, SC and Gibson, GA	2326
Table of Allotments, FM, Hampton and Parkersburg, IA	2406
Table of Allotments, FM, Hatteras, NC	2351
Table of Allotments, FM, Jewett, NY	2403
Table of Allotments, FM, Jonesboro, AR	2410
Table of Allotments, FM, Ladson, SC	2388
Table of Allotments, FM, Longwood, NC	2349
Table of Allotments, FM, Lovington, NM	2405
Table of Allotments, FM, McRae and Nashville, GA	2274
Table of Allotments, FM, Oak Creek, CO	2276
Table of Allotments, FM, Paradise and Fort Bragg, CA	2408
Table of Allotments, FM, Sun City, AZ	2271
Table of Allotments, FM, Walterboro, SC	2381
Table of Allotments, FM, Warrenton, GA	2322
Table of Allotments, FM, Wellington and Wichita, KS (ERRATUM)	2328
Table of Allotments, TV, Farmington and Gallup, NM	2382
Telesphere Communications, Inc.	2267
Tri-State Broadcasting Company, Inc.	2368

FEDERAL COMMUNICATIONS COMMISSION

Case Name	Page
Triax Telecom, Inc.	2305
Troka, Paul J.	2395
Value Radio Corporation	2260
Western Union Remand Proceeding	2366
Wind 'N Sea FM Limited Partnership	2293

Federal Communications Commission Record

Table of Cases by Delegated Authority and FCC Number
Volume 7
Issue 8

Delegated Authority or FCC Number	Page	Delegated Authority or FCC Number	Page
DA 92 - 263	2301	DA 92 - 416	2328
DA 92 - 326	2361	DA 92 - 417	2349
DA 92 - 334	2414	DA 92 - 418	2351
DA 92 - 358	2293	DA 92 - 420	2304
DA 92 - 359	2297	DA 92 - 421	2311
DA 92 - 360	2291	DA 92 - 422	2312
DA 92 - 361	2299	DA 92 - 423	2305
DA 92 - 362	2269	DA 92 - 424	2306
DA 92 - 363	2359	DA 92 - 425	2329
DA 92 - 366	2271	DA 92 - 426	2335
DA 92 - 367	2274	DA 92 - 427	2377
DA 92 - 368	2276	DA 92 - 428	2353
DA 92 - 375	2277	DA 92 - 429	2364
DA 92 - 377	2278	DA 92 - 430	2337
DA 92 - 380	2316	DA 92 - 431	2339
DA 92 - 386	2360	DA 92 - 432	2336
DA 92 - 391	2318	DA 92 - 433	2340
DA 92 - 393	2322	DA 92 - 434	2380
DA 92 - 394	2324	DA 92 - 435	2381
DA 92 - 395	2326	DA 92 - 436	2382
DA 92 - 396	2250	DA 92 - 437	2386
DA 92 - 397	2262	DA 92 - 438	2341
DA 92 - 399	2332	DA 92 - 439	2366
DA 92 - 400	2249	DA 92 - 440	2344
DA 92 - 401	2251	DA 92 - 441	2367
DA 92 - 402	2263	DA 92 - 442	2345
DA 92 - 403	2309	DA 92 - 443	2370
DA 92 - 404	2265	DA 92 - 444	2388
DA 92 - 405	2267	DA 92 - 445	2403
DA 92 - 406	2289	DA 92 - 447	2405
DA 92 - 407	2347	DA 92 - 448	2406
DA 92 - 408	2308	DA 92 - 449	2408
DA 92 - 409	2310	DA 92 - 450	2410
DA 92 - 411	2354	DA 92 - 451	2412
DA 92 - 412	2356	DA 92 - 460	2373
DA 92 - 413	2288	DA 92 - 461	2375
DA 92 - 414	2333	FCC 92 - 94	2449
DA 92 - 415	2334	FCC 92 - 95	2313

Delegated Authority or FCC Number	Page
FCC 92 - 104	2342
FCC 92 - 105	2390
FCC 92 - 106	2391
FCC 92 - 107	2392
FCC 92 - 108	2393
FCC 92 - 109	2395
FCC 92 - 110	2397
FCC 92 - 111	2399
FCC 92 - 112	2401
FCC 92 - 157	2279
FCC 92 - 159	2252
FCC 92 - 163	2256
FCC 92 - 165	2284
FCC 92 - 166	2330
FCC 92D - 28	2260
FCC 92I - 21	2368
FCC 92R - 31	2363

Federal Communications Commission Record

Table of Cases by Docket Number
Volume 7
Issue 8

Docket Number	Page	Docket Number	Page
CC Dkt.No.78 - 97	2366	MM Dkt.No.92 - 5	2276
CC Dkt.No.83 - 1376	2332	MM Dkt.No.92 - 50	2301
CC Dkt.No.86 - 10	2334	MM Dkt.No.92 - 61	2291
CC Dkt.No.86 - 10	2336	MM Dkt.No.92 - 62	2299
CC Dkt.No.88 - 2	2333	MM Dkt.No.92 - 63	2297
CC Dkt.No.90 - 6	2449	MM Dkt.No.92 - 64	2293
CC Dkt.No.90 - 623	2333	MM Dkt.No.92 - 65	2269
CC Dkt.No.92 - 76	2370	MM Dkt.No.92 - 66	2271
ET Dkt.No.91 - 150	2256	MM Dkt.No.92 - 67	2274
ET Dkt.No.92 - 28	2361	MM Dkt.No.92 - 68	2316
GN Dkt.No.91 - 1	2279	MM Dkt.No.92 - 69	2354
MM Dkt.No.85 - 355	2368	MM Dkt.No.92 - 70	2356
MM Dkt.No.89 - 350	2363	MM Dkt.No.92 - 71	2349
MM Dkt.No.89 - 404	2326	MM Dkt.No.92 - 72	2351
MM Dkt.No.89 - 429	2328	MM Dkt.No.92 - 73	2322
MM Dkt.No.89 - 512	2377	MM Dkt.No.92 - 74	2324
MM Dkt.No.89 - 595	2318	MM Dkt.No.92 - 75	2347
MM Dkt.No.89 - 603	2278	MM Dkt.No.92 - 81	2382
MM Dkt.No.90 - 181	2329	MM Dkt.No.92 - 82	2386
MM Dkt.No.91 - 13	2260	MM Dkt.No.92 - 83	2403
MM Dkt.No.91 - 67	2284	MM Dkt.No.92 - 84	2388
MM Dkt.No.91 - 262	2381	MM Dkt.No.92 - 85	2406
MM Dkt.No.91 - 264	2380	MM Dkt.No.92 - 86	2408
MM Dkt.No.91 - 305	2405	MM Dkt.No.92 - 87	2410
MM Dkt.No.92 - 4	2277	MM Dkt.No.92 - 88	2412

Federal Communications Commission Record

Table of Cases by Rulemaking Number
Volume 7
Issue 8

Rulemaking Number	Page
RM - 4436	2332
RM - 6874	2328
RM - 6895	2326
RM - 6973	2377
RM - 7042	2318
RM - 7076	2278
RM - 7094	2318
RM - 7133	2326
RM - 7206	2328
RM - 7251	2256
RM - 7256	2328
RM - 7319	2278
RM - 7791	2380
RM - 7792	2381
RM - 7825	2405
RM - 7843	2386
RM - 7875	2382
RM - 7878	2276
RM - 7880	2277
RM - 7925	2388
RM - 7926	2349
RM - 7928	2351
RM - 7938	2269
RM - 7940	2271
RM - 7945	2274
RM - 7946	2403
RM - 7949	2316
RM - 7952	2324
RM - 7953	2347
RM - 7954	2322
RM - 7959	2406
RM - 7961	2408
RM - 7962	2412
RM - 7963	2410

Table of Cases by City
Volume 7
Issue 8

City/State	Page	City/State	Page
Andover, KS	2328	Jonesboro, AR	2410
Astoria, OR	2392	La Crosse, WI	2354
Baxter, TN	2278	Ladson, SC	2388
Bismarck, ND	2380	Longwood, NC	2349
Boone, IA	2347	Lovington, NM	2405
Brockport, NY	2291	Maryville, MO	2318
Byrdstown, TN	2324	McRae, GA	2274
Celina, TN	2278	Mishicot, WI	2260
Clarinda, IA	2318	Nashville, GA	2274
Clemson, SC	2301	Norwood, OH	2377
Concrete, WA	2395	Oak Creek, CO	2276
Conway, AR	2249	Ocean City, MD	2293
Costa Mesa, CA	2397	Omaha, NE	2318
Eastsound, WA	2393	Paradise, CA	2408
Eatonville, WA	2386	Parkersburg, IA	2406
Emmetsburg, IA	2347	Plattsmouth, NE	2318
Fairbury, NE	2318	Pompano Beach, FL	2340
Fairfield, OH	2377	Ponte Vedra Beach, FL	2363
Farmington, NM	2382	Providence, RI	2345
Fort Bragg, CA	2408	Pullap, WA	2390
Gallup, NM	2382	Queensbury, NY	2329
Gibson, GA	2326	Scottsdale, AZ	2330
Gladwin, MI	2269	Seattle, WA	2391
Goldendale, WA	2316	Seelyville, IN	2299
Great Falls, MT	2412	South El Monte, CA	2399
Greenacres, CA	2277	Sun City, AZ	2271
Greenville, GA	2297	Tempe, AR	2368
Greenwood, SC	2326	Utica, NY	2252
Hampton, IA	2406	Walterboro, SC	2381
Hatteras, NC	2351	Warrenton, GA	2322
Hobson, AL	2356	Watertown, TN	2278
Jewett, NY	2403	Wellington, KS	2328
		Wichita, KS	2328

Federal Communications Commission Record

Subject Index
Volume 7
Issue 8

Subject	Page
Adjudication	
Review Board or Commission Decision	
Reopening of record	2260
Broadcast Radio Services - General Rules	
Applications for authorization	
Public notice of filing of broadcast applications, local	2284
Licenses and permits	
Multiple ownership of broadcast stations in the same service	2330
Broadcasting - FM Stations	
Allotments and assignments	
Allotments, table of	2347, 2349, 2351, 2316, 2318, 2322, 2324, 2326, 2269, 2271, 2274, 2276, 2277, 2278, 2377, 2380, 2381, 2386, 2388, 2403, 2405, 2406, 2408, 2410, 2412
Broadcasting - TV Stations	
Allocations/assignments/licenses	
Table of assignments	2252, 2382
Carriers: Service Altered	
Extensions and supplements	
Applications, contents of	2262, 2263, 2265, 2267, 2304, 2305, 2306, 2309, 2310, 2311, 2337, 2373
Communications Act of 1934	
Common Carriers	
Complaints to the commission	2251, 2288, 2289, 2289
Discrimination and preferences	2289
Extension of lines, certificate for	2263, 2265, 2267, 2304, 2306, 2309, 2310, 2337, 2339, 2373
Service and charges	2289

Subject	Page
Practice and Procedure	
Common carriers: complaints	
Formal or informal	2288
Common carriers: complaints, formal	
Supplemental complaints	2289
Pleadings, briefs	
Extension of time, motions for	2289
Informal requests for Commission action, persons may make	2366
Proceedings, miscellaneous	
Forfeiture proceedings	2340
Public Mobile Service	
Applications and licenses-filing requirements	
Forms and permissive changes or minor modifications	2449, 2340
Applications and licenses-processing	
Mutually exclusive applications	2249
Domestic public cellular radio telecommunications service	
Service areas	2449
Radio Frequency Devices	
Lowpower communication devices: general requirements	
Between 49.82-49.90 MHz, alternative specifications for the band	2279
Lowpower specific devices: control and security alarms	
Technical standards	2256
Lowpower specific devices: cordless telephones	
Non-interference, requirement for	2256
Statutory Citations Other than Communications	
Implementation of policy	2339

TABLE OF STATUTORY AND RULE PROVISIONS

	Page
001.080 Forfeiture proceedings	2340
001.46 Motions for extension of time	2289
001.711 Formal or informal Complaint	2288
001.727 Motions	2289
022.009 Standard applications forms and permissive changes o	2340
063.001 Contents of APplication	2304
063.001 Contents of Application	2310
063.001 Contents of Application	2312
063.001 Contents of Application	2373
063.001 Contents of Applications	2305
063.001 Contents of Applications	2306
063.001 Contents of Applications	2309
063.001 Contents of Applications	2311
063.001 Contents of Applications	2337
063.001 Contents of Applications	2341
063.01 Contents of Application	2263
063.01 Contents of Applications	2267
073.1206 Broadcast of Telephone Conversations	2345
073.202 FM Table of Allotments	2269
073.202 FM Table of Allotments	2271
073.202 FM Table of Allotments	2274
073.202 FM Table of Allotments	2276
073.202 FM Table of Allotments	2277
073.202 FM Table of Allotments	2278
073.202 FM Table of Allotments	2316
073.202 FM Table of Allotments	2318
073.202 FM Table of Allotments	2322
073.202 FM Table of Allotments	2324
073.202 FM Table of Allotments	2326
073.202 FM Table of Allotments	2328
073.202 FM Table of Allotments	2347
073.202 FM Table of Allotments	2349
073.202 FM Table of Allotments	2351
073.202 FM Table of Allotments	2377
073.202 FM Table of Allotments	2380
073.202 FM Table of Allotments	2381
073.202 FM Table of Allotments	2388
073.202 FM Table of Allotments	2405
073.202 FM Table of Allotments	2408
073.202 FM Table of Allotments	2410
073.202 FM Table of Allotments	2412
073.3555 Multiple Ownership	2330
073.606 TV Table of Allotments	2382
15.205 Restricted bands of operation	2256
15.237 Operation in the bands 72-73 MHz, 74.6-74.8 MHz and 7	2256
2.803 Marketing uncertified computers	2401
300.154 Provisions Relating to the Commission	2289
300.201 Service and Charges	2289
300.201 Services and charges	2250
300.202 Discrimination and Preferences	2289

300.202 Preference and discrimination 2250
300.207 Recovery of Damages 2289
300.208 Complaints to Commission 2251
300.208 Complaints to the Commission 2288
300.208 Complaints to the Commission 2289
300.208 Complaints to the Commission 2353
300.214 Extension of Lines 2263
300.214 Extension of Lines 2265
300.214 Extension of Lines 2267
300.214 Extension of Lines 2304
300.214 Extension of Lines 2305
300.214 Extension of Lines 2306
300.214 Extension of Lines 2309
300.214 Extension of Lines 2310
300.214 Extension of Lines 2311
300.214 Extension of Lines 2312
300.214 Extension of Lines 2337
300.214 Extension of Lines 2339
300.214 Extension of Lines 2341
300.214 Extension of Lines 2373
301 - Unauthorized Operation 2390
301 - Unauthorized Operation 2391
301 - Unauthorized Operation 2392
301 - Unauthorized Operation 2393
301 - Unauthorized Operation 2395
400.05581 2370
400.201 Implementation of Policy 2339
400.401 Applicability of Communications Act of 1934 2339
47 CFR 64.702, Furnishing of Enhanced Services and CPE 2333
500.100 HDO 2291
500.100 HDO 2293
500.100 HDO 2297
500.100 HDO 2299
500.100 HDO 2301
500.100 HDO 2354
500.100 HDO 2356
500.2145 air hazard 2260
500.3157 Settlement agreements 2368
63.01 Contents of Application 2262
63.01 Contents of Application 2265
73.606 Table of Allotments 2252
Amendment of Section 2.106, Amendment of Parts 2, 22 and 25 2361
Communications Common Carriers 2359
DA 92-326, ET Docket No. 92-28 2361
Golden Corners Broadcasting, Inc., MM Doc 92-50 DA 92-263 2301
NPRM, FM B/C STAS. (Hampton and Parkersburg, IA), DA 92-448 2406
NPRM, FM B/C STAS. (Jewett, NY), DA 92-445 2403
Pub. Not.; CC Dkt. 78-97; WU Remand Proceeding; DA 92-439 2366
Reporting and Recordkeeping Requirements 2359
Rocky MT Brd/cstg, Greenville, GA, FM HDO, MM 92-, DA 92-359 2297
Sec. 1.41 Informal Request for Commission Action 2366
Sec. 309(a) application grants 2375
Sec. 61.58 Notice Requirement 2367
Sec. 61.58 Notice Requirements 2364

Section 1.46 Motion for Extension of Time 2344
Section 15.119 Closed Caption Decoder Requirements for TV Re 2279
Section 22.31(d), Mutually exclusive applications 2249
Wind 'N Sea FM L. P., Ocean City MD, FM HDO, MM 92- , DA 92- 2293
§ 61.49 Submission of Supporting Information 2342
§ 63.100 Notification of Outages 2359
§2.803 - Marketing uncertified computers 2399
§2.803 Marketing unauthorized computers 2397
§73.3580 Local Public Notice 2284

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

ANSWER FORT SMITH, INC. File No. 20300-CD-P/ML-01-91

For Facilities In The Public Land Mobile Service For Frequency 158.10 MHz, at Conway, Arkansas.

MEMORANDUM OPINION AND ORDER

Adopted: March 30, 1992; Released: April 6, 1992

By the Chief, Mobile Services Division:

I. INTRODUCTION AND BACKGROUND

1. Snider Communications Corporation d/b/a Snider Telecom (Snider) filed a petition to dismiss or deny the application of Answer Fort Smith, Inc. (Answer Fort Smith) for new paging facilities on 158.10 MHz at Conway, Arkansas. Snider maintains that Answer Fort Smith's application was untimely filed and should be returned pursuant to §§22.31(b)(2) and 22.31(d) of the Commission's rules.[1]

2. Answer Fort Smith's application was filed on October 15, 1990 and was accepted for filing on October 24, 1990 in Public Notice PMS 91-04. Snider's application, accepted for filing on January 17, 1990 in Public Notice PMS-90-16, for facilities on frequency 158.10 MHz at Clinton, Arkansas (File No. 21532-CD-P/L-01-90) was granted October 9, 1990 and announced in Public Notice PMS-91-03A dated October 17, 1990. When it filed its application, Answer Fort Smith thought that its filing was mutually exclusive with Snider's Clinton application as well as with a pending application Snider filed for an additional transmitter location for Snider's PLMS Station KNKB 939 at Conway, Arkansas (File No. 27362-CD-P/ML-01-90). It was not until Snider's Clinton application had been granted that Answer Fort Smith realized that it was required to demonstrate interference-free operation pursuant to 47 C.F.R. §§22.15(b)(1) and (b)(2). Once Answer Fort Smith became aware it was not mutually exclusive with Snider, it filed a minor amendment on October 25, 1990 demonstrating that the facilities proposed in its Conway application would not cause harmful electrical interference to Snider's co-channel facilities at Clinton. Thus, based on these circumstances, Answer Fort Smith contends that Snider's allegation is without merit and the Commission must retain its application for comparative consideration with the pending Snider Conway application.[2]

II. DISCUSSION

3. We agree with Answer Fort Smith that the allegation raised by Snider is without merit. Once it became aware that the Snider Clinton application had been granted, Answer Fort Smith amended its application to demonstrate interference-free operation. Under the Commission policy adopted in *Allen C. Moore*, 86 FCC 2d 786, 795 (Com. Car. Bur. 1981), a mutually exclusive application that has not been returned and is cured by a minor amendment filed after the cut-off date, but before being reached for processing, will be retained on file and given comparative consideration. We also find that the public interest, convenience and necessity will be served by granting the application of Answer Fort Smith.

III. ORDERING PARAGRAPHS

4. Accordingly, IT IS ORDERED that the Petition to Dismiss or Deny filed by Snider Communications Corporation d/b/a Snider Telecom IS DENIED.

5. IT IS FURTHER ORDERED that the application of Answer Fort Smith, Inc. (File No. 20300-CD-P/ML-01-91) IS GRANTED.

6. IT IS FURTHER ORDERED that the application of Snider Communications Corp. d/b/a Snider Telecom (File No. 27362-CD-P/ML-01-90) is DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Mobile Services Division
Common Carrier Bureau

FOOTNOTES

[1] Section 22.31 (b)(2) provides, *inter alia*, that an application is entitled to comparative consideration with a conflicting application if it is received in a condition acceptable for filing by a "cut-off" date 60 days after the date of the public notice listing the first of the conflicting applications as accepted for filing.

Section 22.31(d) provides that "[a]n application otherwise mutually exclusive with one or more previously filed applications, but filed after the appropriate date prescribed in paragraph (b)(2) of this section, will be returned without prejudice. . ."

[2] On July 10, 1991, the MSD held a lottery of the Answer Fort Smith and Snider (Conway) applications. Answer Fort Smith was the winner.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN MESSAGE CENTERS,
Complainant,

v. File No. E-91-115

TELECOM MANAGEMENT SERVICES,
Defendant.

ORDER

Adopted: March 30, 1992; Released: April 6, 1992

By the Deputy Chief (Operations), Enforcement Division, Common Carrier Bureau:

1. On September 17, 1991, American Message Centers (American) filed a formal complaint against Telecom Management Services (Telecom), a resale carrier, alleging that Telecom had charged American approximately $160,000 for unauthorized or fraudulent telephone calls. In a supplement to the complaint filed on November 26, 1991, American, among other things, moved to dismiss its complaint against Telecom with prejudice on the basis of a settlement agreement entered into on November 12, 1991.

2. We are satisfied that dismissal of this complaint will serve the public interest by eliminating the need for further litigation and the expenditure of further time and resources of this Commission.

3. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and the authority delegated by Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, that American's Motion to Dismiss the complaint IS GRANTED.

4. IT IS FURTHER ORDERED that the above-captioned complaint IS DISMISSED WITH PREJUDICE and the proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory A. Weiss
Deputy Chief (Operations)
Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

National Teleservices, Inc.,	File Nos. E-91-168
TeleMarketing Corp. of Louisiana,	E-91-169
Telephone Associates Long Distance Services, Inc. and Westel, Inc., Complainants,	E-91-170
	E-91-171

v.

Central Telephone Company of Florida, Central Telephone Company of Illinois, Central Telephone Company-Minnesota, and Central Telephone Company-Nevada
Defendants.

ORDER

Adopted: March 30, 1992; Released: April 6, 1992

By the Deputy Chief, Enforcement Division, Common Carrier Bureau:

1. On September 27, 1991, National Teleservices, Inc., TeleMarketing Corp. of Louisiana, Telephone Associates Long Distance Services, Inc. and Westel, Inc. (Complainants) filed the above-captioned complaint alleging that the defendants' rates for interstate access services during the period January 1, 1987, to December 31, 1988, were unjust and unreasonable in violation of Section 201(b) of the Communications Act, 47 U.S.C. § 201(b).

2. On February 19, 1992, the Complainants filed a Motion to Terminate Proceedings stating that "it is the Complainants' business judgment that continued litigation is not warranted."

3. On the basis of the statements contained in the Motion, we grant the Complainants' request to terminate proceedings.

4. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 208, and authority delegated under Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, that the Motion to Terminate the above-captioned complaint IS GRANTED.

5. IT IS FURTHER ORDERED that the above-captioned complaint IS DISMISSED WITH PREJUDICE and the proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory A. Weiss
Deputy Chief (Operations)
Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

GREATER UTICA-ROME TV SERVICES, INC. File No. BPCT-881121KL

and

MOHAWK VALLEY TELECASTERS, INC. File No. BPCT-880923KG

For authorization of a construction permit for new commercial television station Channel 4, Utica, New York

MEMORANDUM OPINION AND ORDER

Adopted: March 23, 1992; Released: April 7, 1992

By the Commission: Commissioner Quello dissenting and issuing a statement.

1. The Commission has before it for consideration: (a) applications for review of the March 7, 1991, action of the Chief, Mass Media Bureau, denying the petitions of Greater Utica-Rome TV Services, Inc. (Greater Utica) and Mohawk Valley Telecasters, Inc. (Mohawk Valley) for waiver of the television application *Freeze Order*, to permit application for a new television station to operate on Channel 4, Utica, New York; (b) an objection to the applications filed by Harron Communications Corp. (Harron); and (c) related pleadings.

BACKGROUND

2. On July 16, 1987, the Commission imposed a temporary freeze on applications for new television stations within the minimum co-channel separation distances from 30 designated television markets. *Advanced Television Systems*, 52 Fed. Reg. 28346 (July 29, 1987) (*Freeze Order*). We imposed the freeze because the high densities of existing television stations in those markets limited the spectrum available for advanced television (ATV) service there, and we wanted to preserve our spectrum allocation options for ATV use. *Id.* One of the listed cities is Hartford, Connecticut; consequently, all new VHF proposals for communities within 169.5 miles (272.7 km) of Hartford are subject to the freeze. Utica, New York, is 159.4 miles (256.5 kilometers) from Hartford and is therefore within the proscribed area.

3. In the *Freeze Order* we stated that we would not accept new petitions for amendments to the TV Table of Allotments or applications for television construction permits for vacant television allotments within any freeze area. *Id.* However, we stated that we would continue to process as usual petitions for rulemaking already on file at the commencement of the freeze. However, while new channel allotments could result from pending rulemaking petitions, we also stated that we would accept no subsequent applications for those new allotments. *Id.* Rather, the channel would be added to the Table of Allotments, which would indicate in each case whether the freeze would apply to the particular allotment. *Id.*, at 2, n.3. In addition, we announced that we would consider waiver requests on a case-by-case basis for noncommercial educational channels, or for applicants which provided compelling reasons why the freeze should not apply to their particular situation or class of stations. *Id.*, at 2.

4. At the time we issued the *Freeze Order*, a petition was pending from Mohawk Valley to allocate Channel 4 to Utica. The staff subsequently processed that petition consistent with the procedures set out above and allocated the channel. *Amendment of Table of Allotments (Albany, Buffalo, Ilion, and Utica, New York, and Boston, Massachusetts)*, 3 FCC Rcd 2208 (Policy and Rules Div., 1988) (*Report and Order*). In the *Report and Order*, however, the staff mistakenly declared that the freeze did not apply to applications filed for the new channel. *Id.*, at 2208. Approximately three months after the allocation, Mohawk Valley applied for a construction permit. Mohawk Valley did not seek waiver of the freeze, and its application was returned as unacceptable for filing on August 2, 1988, since the staff had by then discovered that its proposal fell within the geographic proscriptions of the *Freeze Order*. On September 23, Mohawk Valley sought reconsideration of that action and waiver of the freeze. Thereafter, on November 21, 1988, Greater Utica filed its application and requested a waiver. On March 5, 1991, by letters to the petitioners, the Mass Media Bureau acknowledged its misstatement in the allocation order, again stated that the freeze applies, and denied the applicants' requests for waiver. Mohawk Valley and Greater Utica seek Commission review of that action. Harron has filed an objection, essentially agreeing with the position taken by the staff.

5. In their applications for review, petitioners contend that the staff erred in rejecting the specific engineering and public interest showings they proffered in support of their waiver requests. In support thereof, they maintain that the proposed use of Channel 4 in Utica would have no impact on ATV use in Hartford. First, they assert, the current operation of Channel 3 in Hartford and Channels 2 and 4 in New York City precludes use of Channel 4 in the Hartford area for high-definition purposes. Second, they maintain that their willingness to accept certain proposed conditions on their technical operations would ensure the Commission with adequate flexibility to resolve any problems posed by future ATV use in Hartford-New Haven or elsewhere. Further, petitioners contend that the public interest would be served by grant of a waiver because activation of Channel 4 would provide a new service to approximately 1.6 million people and would prevent a potentially useful channel from remaining silent. As an additional factor in support of a waiver, the petitioners also point to the substantial investments made in applying for the requested construction permits. [1]

[1] Greater Utica also contends that the staff failed to address its arguments regarding Harron's lack of standing to oppose the

DISCUSSION

6. It is uncontroverted that Utica is located within the area proscribed by our *Freeze Order* and, therefore, applications for that new allotment cannot be accepted, absent a compelling showing that waiver of the freeze is warranted. While the staff initially misstated the applicability of our *Freeze Order* here, it corrected that error and treated the petitioners' proposals in accord with the *Freeze Order*. Upon review, we find that the staff acted properly in so treating the Channel 4 applications and in concluding that petitioners had not met the requisite standard for waiver of the freeze.

7. We disagree with petitioners' claims that activation of Channel 4 in Utica would have no impact on our plans for implementation of ATV service. Our analyses at the time we adopted the freeze indicated that in the areas affected by the freeze the high densities of existing stations leave relatively limited spectrum available for transmission of ATV signals.[2] Subsequent studies by our Office of Engineering and Technology (OET) indicate that the northeast region in which Utica is located is one of the most congested areas of the country with respect to existing stations. [3] Because of this congestion, the spectrum available for ATV operation in this region is very limited. Consequently, any activation of a conventional television station in this area would almost certainly hamper our efforts to provide an ATV channel for all existing television stations.[4]

8. In this regard, petitioners' arguments that use of Channel 3 in Hartford and Channels 2 and 4 in New York preclude the use of Channel 4 for ATV in Hartford are short-sighted. It is expected that the advanced television transmission system will allow ATV facilities to be located at distances much closer to co-channel conventional stations than are now permitted between two conventional stations. In addition, it is expected that it will be possible to co-locate adjacent channel ATV and conventional stations. Thus, while the final ATV allotment table may not locate a Channel 4 operation in Hartford because of its proximity to the Channel 4 operation in New York, it is possible that this channel will be used in other locations in the New York-New England area that might conflict with a conventional station on Channel 4 in Utica. In fact, it is possible that we might need to use Channel 4 in Utica itself for ATV service.

9. A conditional grant of the application would not alleviate these concerns. The petitioners state that they would accept a grant on the condition that when the Commission, by final order, authorizes a Channel 4 ATV operation in Hartford-New Haven, the Utica Channel 4 construction permit or license would then be modified to specify directional operation (including precision offset carrier requirements) providing equivalent distance protection to the Channel 4 ATV operation in Hartford-New Haven. This proposed condition fails to meet our need to maintain maximum flexibility in allocating ATV channels because it eliminates any possibility of allocating an ATV Channel 4 in Utica itself. Moreover, we do not know at this time the precise technical rules that will be adopted in the ATV proceeding. A conditional grant would require us to process this application, which may never be grantable. Furthermore, the precedent established by such a conditional grant would require the use of our limited resources to process many other applications subject to the freeze that similarly might not be grantable. Accordingly, we reject the applicants' suggestions that we make conditional grants.

10. In addition, we note that Utica already receives service from several broadcasters. Three channels are licensed to Utica: WFXV(TV), Channel 33; WKTV(TV), Channel 2; and WUTR(TV), Channel 20. In addition, Utica lies within the Grade B contours of four Syracuse, New York, stations: WIXT(TV), Channel 9; WSTM-TV, Channel 3; WSYT(TV), Channel 68; and WTVH(TV), Channel 5. While the addition of new service to Utica is a desirable objective, we believe the public interest goal of providing a viable ATV service outweighs that objective in the circumstances of this case. Similarly, we are not persuaded that petitioners' efforts and expenditures in seeking a Channel 4 operation at this time warrant jeopardizing the full development of a viable ATV service.

CONCLUSION

11. Based on the foregoing, we find that the petitioners have failed to demonstrate that the staff's denial of a waiver should be reversed.

12. Accordingly, IT IS ORDERED that the applications for review filed by Greater Utica-Rome TV Services, Inc. and by Mohawk Valley Telecasters, Inc. ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

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waiver request and otherwise ignored the arguments it advanced in opposition to Harron's objection. While the staff did not specifically rule on the question of standing, the substantive arguments advanced by Greater Utica in its opposition pleading were essentially the same as those which were proffered by Greater Utica in support of its waiver request and which were considered and addressed by the staff in ruling thereon. Accordingly, the above omission does not constitute a material error warranting reversal of the staff's ruling. Additionally, we note that the staff properly considered Harron's petition as an informal objection pursuant to Section 73.3587 of the Commission's Rules.

[2] *See Freeze Order*, at para. 2.

[3] Our current plan for implementation of ATV service is to provide all existing TV stations with a second 6 MHz channel for operation of a "simulcast" high definition television transmission system. *See First Report and Order* in MM Docket No. 87-268, 5 FCC Rcd 5627, at para. 1. *See also Notice of Proposed Rulemaking*, 6 FCC Rcd 7024 (1991), at paras. 34-35.

[4] *See* OET Technical Memorandum, FCC/OET TM89-1, December, 1989.

Dissenting Statement of Commissioner James H. Quello

In re Applications of

Greater Utica-Rome TV Services, Inc.
and
Mohawk Valley Telecasters, Inc.

Utica, New York, the 110th television market in the United States, has no local CBS affiliate. Recognizing the need for additional over-the-air television service in this market, the Mass Media Bureau allotted Channel 4 to Utica. *Amendment of Table of Allotments (Albany, Buffalo, Ilion, and Utica, New York, and Boston, Massachusetts)*, 3 FCC Rcd. 2208 (Policy and Rules Div., 1988). At the time, the staff concluded that Utica was not "affected by the recently imposed freeze on new allotments or applications for new allotments within the co-channel separation distance" listed in the table of 30 major markets in which frequency was set aside for future HDTV use.

Relying on this ruling, Mohawk Valley Telecasters, Inc., and later, Greater Utica-Rome TV, Inc. each filed applications for the new allotment. Mohawk's initial application was returned by the staff, however, for proposing a site within the minimum co-channel separation distance to Hartford-New Haven, CT, thereby bringing it within the freeze proscription.[1] The Commission now describes the initial determination that the freeze does not apply as a "misstatement" and affirms the Bureau decision to dismiss the applications. I respectfully dissent.

While I do not question the need to preserve spectrum for use by HDTV, I am concerned that this action will do nothing to promote HDTV while, at the same time, it will deny new over-the-air service to 1.6 million people. The Commission seeks to preserve the use of Channel 3 for high definition use in Hartford-New Haven, yet does not dispute the applicants' showing that current usage of Channels 2 and 4 in New York already will have a preclusive effect. Rather than defend the co-channel separation criteria under which the applications were dismissed initially, the Commission now concludes that "it is *possible* that this channel will be used in other locations in the New York-New England area that *might* conflict with a conventional station on Channel 4 in Utica." *Memorandum Opinion and Order* at ¶ 8 (emphasis added). To me, this is too tenuous a need to bar service that the Commission otherwise determined is in the public interest.[2]

Even if the Commission had more persuasively demonstrated the conflict between the Utica allotment and the HDTV reserve, the purported overlap in this case is not so great as to warrant summary dismissal of the applications. The Freeze Order made clear that "[t]he Commission will consider waiver requests on a case-by-case basis . . . for licensees which provide compelling reasons why this freeze should not apply to them." And pursuant to this policy, the Commission has granted waivers from the freeze order that represented an even greater short-spacing than presented here.[3] The case for a waiver is even more persuasive in this proceeding, where both applicants agreed to condition the Channel 4 grant on a directional operation providing equivalent distance protection to HDTV operations in Hartford-New Haven.

Ultimately, the public interest benefits we hope to attain by mechanically applying the freeze on these facts are entirely too speculative. On the other side of the scale, the

denial of a VHF facility in Utica precludes service to a large population. The Commission's decision in this case represents an injustice to the applicants, who were led to believe the allotment was unaffected by the freeze. It also disserves the public, who no doubt would prefer increased service today over what may or may not be an HDTV allotment in Hartford tomorrow. Accordingly, I dissent.

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[1]Greater Utica filed its application after the staff initially returned the Mohawk application. However, the principals of Greater Utica had indicated their intention to file for the new allotment in September 1987, as the staff acknowledged when the channel was allotted. *See Amendment of Table of Allotments (Albany, Buffalo, Ilion, and Utica, New York, and Boston, Massachusetts)*, 3 FCC Rcd. at ¶ 1. Accordingly, Greater Utica included a request to waive the freeze restriction when it filed its application. Mohawk Valley filed a similar waiver request with its petition to reconsider the staff action.

[2]It is worth noting that no television licensees in the Hartford-New Haven market objected to the Utica allotment.

[3]*See Sunbelt-South Tele-Communications Ltd.*, File No. BPCT-871028KE (Mass Media Bureau March 9, 1988).

Before the
Federal Communications Commission
Washington, D.C. 20554

ET Docket No. 91-150

In the Matter of

Amendment of Part 15 to
Provide Additional Frequencies for Auditory Assistance Devices for the Hearing Impaired — RM-7251

REPORT AND ORDER

Adopted: March 25, 1992; Released: April 7, 1992

By the Commission:

INTRODUCTION

1. By this action, the Commission amends Part 15 of its rules to allow auditory assistance devices to operate in additional frequency bands. This action will improve the ability of educational institutions to meet the needs of hearing impaired students and enhance the participation of hearing impaired individuals at public gatherings. This action addresses matters raised in a petition for rule making filed by Phonic Ear, Inc. ("Phonic Ear").

BACKGROUND

2. Auditory assistance devices operate on a non-licensed basis under Part 15 of the Commission's rules. An auditory assistance device is defined in Section 15.3(a) as an intentional radiator used to provide auditory assistance to a handicapped person or persons.[1] Such devices are typically used for auricular training in an educational institution, for auditory assistance at places of public gatherings, and for auditory assistance to handicapped individuals in other locations. Auditory assistance devices currently operate in the frequency bands 72-73 MHz and 75.4-76 MHz. These frequency bands are allocated to the fixed and mobile services and are available for use under the Domestic Public Land Mobile Service (Part 22), the Private Land Mobile Service (Part 90), and the Personal Radio Service (Part 95). Under the Part 15 conditions for operation, auditory assistance devices may not cause harmful interference to these services and must accept any interference received.

3. In its petition, Phonic Ear stated that auditory assistance devices have been experiencing increasing amounts of interference due to growth in use of the 72-73 MHz and 75.4-76 MHz bands by the land mobile services. These services transmit signals at much higher levels than are permitted for auditory assistance devices under Part 15.[2] Phonic Ear claimed that the interference has degraded the performance of auditory assistance devices to the point where some educational institutions are now unable to use auditory assistance devices in many of their classrooms. In order to correct this situation, Phonic Ear requested that the frequency bands which auditory assistance devices are permitted to use be expanded to include the 74.6-74.8 MHz and 75.2-75.4 MHz bands. This spectrum became available for fixed and mobile services after the two guardbands protecting aeronautical marker beacons at 75.0 MHz were narrowed from 400 kHz to 200 kHz on January 1, 1990.[3] Phonic Ear stated that auditory assistance devices would not experience significant interference on the 74.6-74.8 MHz and 75.2-75.4 MHz bands because there is no existing use of these frequencies and any potential new services on these frequencies must be limited to a maximum power of one watt in accordance with Footnote US 273 to the Table of Frequency Allocations.[4]

4. On May 24, 1991, the Commission adopted a *Notice of Proposed Rule Making* (*Notice*) proposing to amend Part 15 of the rules to allow auditory assistance devices to be operated in the 74.6-74.8 MHz and 75.2-75.4 MHz bands. The Commission proposed to apply the same administrative and technical regulations to auditory assistance devices operating in these bands as those that apply to existing auditory assistance devices.[5] The Commission also proposed to allow general Part 15 usage of these frequency bands at the general radiated emission limits in Section 15.209. The Commission proposed to accomplish this by removing the 74.6-74.8 MHz and 75.2-75.4 MHz spectrum from the restricted table in Section 15.205.

5. Twelve parties filed comments in response to the *Notice*.[6] The commenting parties generally agree that additional frequencies are needed for auditory assistance devices. Phonic Ear and eight organizations representing the hearing impaired support the proposals in the *Notice*. Several of these parties state that making additional frequencies available for auditory assistance devices is consistent with, and would further the goals of, the Americans with Disabilities Act of 1990 (ADA).[7] The American

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[1] *See* 47 CFR Section 15.3(a).

[2] For example, the maximum power for land mobile stations is 150 watts under Part 22 and 350 watts under Part 90. Mobile stations operating under Part 90 in the 72-76MHz band are limited to a transmitter power of one watt. *See* 47 CFR Sections 22.501(f), 90.205(b) and 90.257(b)(2) respectively. Auditory assistance devices are permitted to operate at maximum field strength levels that correspond to a power of 0.0012 watts.

[3] Footnote 572 to the international Table of Frequency Allocations permits the use of the bands 74.6-74.8 MHz and 75.2-75.4 MHz after December 31, 1989 for fixed and mobile services, except aeronautical mobile. Improved receiver technology has enabled a decrease in the width of the guardbands necessary to protect aeronautical marker beacons at 75 MHz from harmful interference. *See* 47 CFR Section 2.106.

[4] *See* Footnote US 273 to the Table of Frequency Allocations, 47 CFR Section 2.106.

[5] Since most certification grants for auditory assistance devices cover the entire 72-76 MHz band, making available additional channels within the authorized band would not require any modification to the existing equipment authorization for most devices.

[6] A list of those filing comments is contained in Appendix A.

[7] *See* the Americans with Disabilities Act of 1990 (ADA), S. 933, Pub. L. 101-336, 104 Stat. 327, 366-69 (July 26, 1990). The ADA's purpose is to provide a clear and comprehensive national

Academy of Audiology and the New York League for the Hard of Hearing also request that other use of the 74.6-74.8 MHz and 75.2-75.4 MHz bands, by either land mobile licensees or other Part 15 users, be prohibited in order to avoid potential interference to auditory assistance device operations.

6. Three parties oppose allowing the specific frequencies proposed in the *Notice* to be used for auditory assistance devices. The Manufacturer's Radio Frequency Advisory Committee (MRFAC) and the Telemotive Industrial Controls Group of Maxtec International Corporation (Maxtec), both of which operate mobile facilities under the Part 90 Private Land Mobile Radio Service rules, express concern about possible interference to future land mobile operations that might be operated in the 74.6-74.8 MHz and 75.2-75.4 MHz bands.[8] The Association for Maximum Service Television (MSTV) states that its analysis suggests that operation of auditory assistance devices could cause interference to television reception on television channels 4 (66-72 MHz) and 5 (76-82 MHz).[9] MSTV further argues that existing users in the 72-76 MHz band6 cause interference to television reception, and that the Commission should consider the cumulative interference that will result from the addition of new users in this band.[10] MSTV asks that the Commission not act on Phonic Ear's petition until its previously-filed petition on television degradation is addressed.[11] In reply to MSTV, Phonic Ear states that, in practice, the potential for harmful interference to television channel 5 is negligible.[12]

DISCUSSION

7. Based on the record in this proceeding, the Commission finds that auditory assistance device users need additional frequencies to remedy interference problems and to meet increasing demands for service. More specifically, the Commission believes that the public interest is best served by making the frequency bands 74.6-74.8MHz and 75.2-75.4 MHz available for use by auditory assistance devices, as proposed in the *Notice*. Auditory assistance devices provide valuable services by enabling the hearing impaired to receive education and to enjoy the theater, church services, and other functions available to the population at large. The comments in this proceeding support Phonic Ear's claim that auditory assistance devices are experiencing significant interference problems. They also indicate that auditory assistance device users need new frequencies to remedy the interference problems and to meet increasing demands. Auditory assistance devices will be far less likely to experience interference on the new frequencies and, as discussed below, we do not believe they will cause harmful interference to other authorized users. The added frequencies are the best suited additional spectrum for auditory assistance devices. These frequencies will enable use of existing equipment designs because of the close proximity to the currently available frequencies. Therefore, we expect there would be little or no increase in the cost of the equipment, which is often a matter of particular concern to the handicapped. In addition, since most certification grants for auditory assistance devices cover the entire 72-76 MHz band, making available additional channels within the authorized band would not require any modification to the existing equipment authorization for most devices.

8. We are not persuaded that auditory assistance devices operating in the new frequency bands device will cause harmful interference to land mobile operations in the same frequency bands, should such operation be authorized. Auditory assistance devices operate with very low signal levels at locations that are generally separated from land mobile transceivers by substantial distances. Furthermore, existing auditory assistance devices have used land mobile frequencies for nearly 20 years without causing any recorded harmful interference.

9. We are also not persuaded that auditory assistance devices operating in the new frequency bands will cause interference to television reception. We agree with Phonic Ear that our existing rules are already adequate to protect television reception from interference by auditory assistance devices, and we believe that operation on the new frequencies will pose little or no new interference threat. Existing auditory assistance devices have operated in the 72-76 MHz band without significant incidence of harmful interference being caused to television reception. In fact, the new frequencies are farther removed from both television channels 4 and 5 than existing auditory assistance device frequencies. Thus, transmissions on the new frequencies are even less likely to cause interference than are transmissions on existing frequencies.

10. Finally, we do not believe it is necessary to prohibit other usage of the 74.6-74.8 MHz and 75.2-75.4 MHz frequency bands. General Part 15 use of the existing auditory assistance device frequencies is already permitted, under Section 15.209. The signal levels allowed for gen-

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mandate for the elimination of discrimination against individuals with disabilities, and to ensure that federal agencies play a central role in enforcing the standards established in the ADA. While not specifically mandated by the ADA, the provision of additional spectrum for the use of auditory assistance devices furthers the goals of the ADA.

[8] The Commission is considering separately a petition for rule making filed by MRFAC that requests that the 74.6-74.8 MHz and 75.2-75.4 MHz bands be allocated to the Manufacturers Radio Service under Part 90 of the Commission's rules. *See Notice of Proposed Rule Making*, PR Docket No. 91-295, 7 FCC Rcd 293 (1991). MRFAC seeks to use these frequencies for remote control of industrial equipment.

[9] MSTV submits that auditory assistance devices, operated at the maximum allowed power levels, could cause interference to television receivers for a distance of as much as 900 feet. MSTV's calculations, which appear to be based on worst-case considerations, assume a desired-to-undesired (D/U) ratio of 50 dB for signals immediately adjacent to television channel 5, a 10 dB D/U ratio for signals more than 0.5 MHz below 76 MHz, and a 10 dB attenuation factor for walls, ground clutter and foliage.

[10] MSTV states that at least 17 different services are authorized to utilize the spectrum between television channels 4 and 5 and that in recent years there has been a proliferation of common carrier and private radio systems in the 72-76 MHZ band, particularly radio frequency links for paging systems.

[11] *See Petition for Inquiry* In the Matter of Degradation of Television Broadcast Service, filed by MSTV on October 4, 1989.

[12] Phonic Ear claims that they have never received a complaint of television interference, even from schools that use both auditory assistance device transmitters and off-the-air television channel 5 programming. Furthermore, Phonic Ear claims that, in practice, in a deep fringe area 90-miles from a channel 5 transmitter over hilly terrain, barely perceptible interference occurs only at distances of up to 10 feet. *See* Reply Comments of Phonic Ear, October 9, 1991.

eral Part 15 operation are considerably lower than the levels permitted for auditory assistance devices. [13] We have no record of interference problems being caused to auditory assistance devices by such operations, and we do not believe that Part 15 devices operating under Section 15.209 on the new auditory assistance device frequencies pose any potential for causing harmful interference. It is beyond the scope of this proceeding to consider whether land mobile operations should be restricted from operating on these frequencies.[14]

11. In light of the foregoing considerations, we are amending Part 15 of the rules to allow auditory assistance devices and other Part 15 devices to operate in the 74.6-74.8 MHz and 75.2-75.4 MHz bands. The administrative and technical requirements for operation in these bands are identical to those existing before this amendment. The specific rule amendments are shown in Appendix B.

PROCEDURAL MATTERS

12. *Regulatory Flexibility Final Analysis:* Pursuant to the Regulatory Flexibility Act of 1980, 5 USC 601 *et seq.*, the following final flexibility analysis has been prepared:

I. *Need for and objective of the rules.*

Auditory assistance devices operating in the bands available to them under the current Part 15 of the FCC Rules appear to be experiencing a significant amount of interference from common carrier and private radio systems. The objective of the rules being adopted is to improve the quality of life for hearing-impaired individuals by affording them the opportunity to better communicate with teachers, performers, and other public speakers.

II. *Summary of issues raised by public comments in response to the Initial Regulatory Flexibility Analysis, Commission assessment of such comments, and changes made as a result.*

No commenting parties raised issues specifically in response to the initial regulatory flexibility analysis. The regulations being adopted in this *Report and Order* will allow auditory assistance devices to operate on frequencies that were not previously available for their use. The added frequencies, in the frequency bands 74.6-74.8 MHz and 75.2-75.4 MHz, are the best suited additional spectrum for auditory assistance devices. These frequencies will enable use of existing equipment designs because of the close proximity to the currently available frequencies. Therefore, we expect there would be little or no increase in the cost of the equipment, which is often a matter of particular concern to the handicapped. In addition, since most certification grants for auditory assistance devices cover the entire 72-76 MHz band, making available additional channels within the authorized band would not require any modification to the existing equipment authorization for most devices. Finally, in these bands the interference potential to auditory assistance devices and to other services by auditory assistance devices and other Part 15 devices, appears to be minimal.

III. *Significant alternatives considered.*

The Commission has considered all of the alternatives presented in this proceeding and has adopted rule changes that provide adequate additional frequencies for auditory assistance devices for the hearing impaired with minimal impact on equipment manufacturers and other users of the spectrum. Alternatives that were considered include retaining the present regulations without authorizing any new services and adopting the regulations proposed in the *Notice*.

ORDERING CLAUSES

13. Accordingly, IT IS ORDERED that under the authority contained in Sections 4(i), 302 and 303 of the Communications Act of 1934, as amended, Part 15 of the Commission's Rules and Regulations ARE AMENDED as set forth in Appendix B below. These rules and regulations are effective 30 days after publication in the Federal Register. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

14. For further information on this proceeding contact George Harenberg, Technical Standards Branch, Room 7122, Office of Engineering and Technology, Federal Communications Commission, Washington, DC 20554, (202) 653-7314.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

Parties Filing Formal Comments

1. American Academy of Audiology
2. American Speech-Language-Hearing Association
3. Association for Maximum Service Television
4. Alexander Graham Bell Association for the Deaf, Inc.
5. Gallaudet University
6. Hawaii State Coordinating Council on Deafness
7. Manufacturers Radio Frequency Advisory Committee, Inc.
8. Telemotive Industrial Controls Group of Maxtec International Corp.

[13] The field strength limit in Section 15.209 is over 50 dB less than the limit for auditory assistance devices.

[14] Consideration of such restrictions would be more appropriately addressed in PR Docket No. 91-295. However, land mobile transmitters operating in the 74.6-74.8 MHz and 75.2-75.4 MHz bands are limited to one watt of power and, thus, are far less likely to cause interference to auditory assistance devices than land mobile transmitters operating at higher power levels on the existing auditory assistance device frequencies.

9. Montgomery County Schools - Division of Auditory Programs

10. New York League for the Hard of Hearing

11. Phonic Ear, Inc.

12. The Registry of Interpreters for the Deaf, Inc.

APPENDIX B

A. Title 47 of the Code of Federal Regulations, Part 15 is amended to read as follows:

1. The authority citation for Part 15 continues to read as follows:

AUTHORITY: Sec. 4, 302, 303, 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303, 304, and 307.

2. Section 15.205(a) is revised to read as follows:

Section 15.205 Restricted bands of operation.

(a) Except as shown in paragraph (d) of this section, only spurious emissions are permitted in any of the frequency bands listed below:

MHz	MHz	MHz	GHz
0.090 - 0.110	156.7 - 156.9	2200 - 2300	9.0 - 9.2
0.49 - 0.51	162.0125 - 167.17	2310 - 2390	9.3 - 9.5
2.1735 - 2.1905	167.72 - 173.2	2483.5 - 2500	10.6 - 12.7
8.362 - 8.366	240 - 285	2655 - 2900	13.25 - 13.4
13.36 - 13.41	322 - 335.4	3260 - 3267	14.47 - 14.5
25.5 - 25.67	399.9 - 410	3332 - 3339	15.35 - 16.2
37.5 - 38.25	608 - 614	3345.8 - 3358	17.7 - 21.4
73 - 74.6	960 - 1240	3600 - 4400	22.01 - 23.12
74.8 - 75.2	1300 - 1427	4500 - 5250	23.6 - 24.0
108 - 121.94	1435 - 1626.5	5350 - 5460	31.2 - 31.8
123 - 138	1660 - 1710	7250 - 7750	36.43 - 36.5
149.9 - 150.05	1718.8 - 1722.2	8025 - 8500	Above 38.6

* * * * *

3. The title of Section 15.237 is revised to read as follows:

Section 15.237 Operation in the bands 72.0 - 73.0 MHz, 74.6 - 74.8 MHz and 75.2 - 76.0 MHz.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-13

In re Application of

VALUE RADIO CORPORATION — File No. BPH-890706MB

For Construction Permit for a
New FM Station on Channel 234A
in Mishicot, Wisconsin

Appearances

David D. Oxenford, Esquire, and *John K. Hane III, Esquire*, on behalf of Value Radio Corporation; *Norman Goldstein, Esquire*, on behalf of the Chief, Mass Media Bureau, Federal Communications Commission.

SUMMARY DECISION OF ADMINISTRATIVE LAW JUDGE ARTHUR I. STEINBERG

Issued: March 31, 1992; Released: April 7, 1992

PRELIMINARY STATEMENT

1. This proceeding was designated for hearing by *Hearing Designation Order*, 6 FCC Rcd 867 (1991) ("*HDO*"). Of the two mutually exclusive applications originally designated for hearing, only Value Radio Corporation ("Value") remains. Value entered into a settlement agreement with the other applicant, Mishicot Broadcasting Corporation, resulting in the dismissal of that application. *See Memorandum Opinion and Order*, FCC 91M-3161, released October 28, 1991. Thus, Value is the sole remaining applicant and must resolve the following issue specified in the *HDO* :

> 1. To determine whether there is a reasonable possibility that the tower height and location proposed by Value would constitute a hazard to air navigation.

2. Under consideration are a Motion for Summary Decision, filed on March 10, 1992, by Value, and comments in support thereof, filed on March 25, 1992, by the Mass Media Bureau.

FINDINGS OF FACT

3. Issue 1 was specified because attempts to obtain Federal Aviation Administration ("FAA") clearance through the Commission's Antenna Survey Branch and the applicant had been unsuccessful. Consequently, since no determination had been received as to whether the antenna proposed by Value would constitute a hazard to air navigation, an appropriate issue was designated. (*HDO*, at para. 3.)

4. On June 12, 1991, Value filed a Petition for Leave to Amend and amendment, specifying a new location for its proposed transmitter site. The petition was granted and the amendment was accepted by *Order*, FCC 91M-2014, released June 28, 1991.

5. Appended to Value's Motion for Summary Decision is an Acknowledgment of Notice of Proposed Construction or Alteration issued by the FAA on March 5, 1992. Therein, the FAA concluded that: "The proposed construction is not identified as an obstruction . . . and would not be a hazard to air navigation." The Mass Media Bureau supports Value's motion.

CONCLUSIONS OF LAW

6. Summary decision is appropriate when there is no genuine issue of material fact remaining for determination at the hearing. *See* Section 1.251 of the Commission's Rules. In order to sustain such a motion, the burden is on the moving party to establish that the truth is clear, that the basic facts are undisputed, and that the parties are not in disagreement regarding material factual inferences that may properly be drawn from such facts. *Big Country Radio, Inc.*, 50 FCC 2d 967 (1975). Value has met this stringent test. Specifically, the FAA's no hazard determination establishes that no material question of fact remains to be decided at the hearing under the outstanding air hazard issue, and resolution of that issue in favor of Value is warranted.

ULTIMATE CONCLUSION

7. With the resolution of Issue 1 in Value's favor, there remains no impediment to a grant of its application, and it will be granted.[1]

Accordingly, IT IS ORDERED that the Motion for Summary Decision filed by Value on March 10, 1992, IS GRANTED and Issue 1 IS RESOLVED in favor of Value.

IT IS FURTHER ORDERED that unless an appeal from this Summary Decision is taken by a party, or it is reviewed by the Commission on its own motion in accordance with Section 1.276 of the Rules, the application of Value Radio Corporation (File No. BPH-890706MB) for a construction permit for a new FM station on Channel 234A in Mishicot, Wisconsin, IS GRANTED.[2]

FEDERAL COMMUNICATIONS COMMISSION

Arthur I. Steinberg
Administrative Law Judge

FOOTNOTES

[1] The Mishicot applicants had originally applied for a facility on Channel 298A. At the time the *HDO* was released, the applications conflicted with a then-pending rule making proceeding, MM Docket No. 89-282, to amend the FM Table of Allotments to, *inter alia*, substitute Channel 298A for 242A at Brillion, Wisconsin. Consequently, the *HDO*, at paras. 2 and 8,

directed that any grant in the instant proceeding be conditioned upon the outcome of MM Docket No. 89-282. By *Report and Order*, 6 FCC Rcd 2624 (1991), MM Docket No. 89-282 was resolved. In pertinent part, the *Report and Order*, at para. 9, ordered the substitution of Channel 234A for Channel 298A at Mishicot, Wisconsin. The *Report and Order* further provided, at note 14, that the applicants for the Mishicot allotment would be permitted to amend their applications to specify Channel 234A without loss of cut-off protection. Value amended its application in this regard, and such amendment was accepted by *Order*, FCC 92M-408, released March 30, 1992. In view of these developments, there no longer is any need to condition the grant of Value's application.

[2] In the event exceptions are not filed within 30 days after the release of this Summary Decision, and the Commission does not review the case on its own motion, this Summary Decision shall become effective 50 days after its public release pursuant to Section 1.276(d) of the Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Latelco Partners, Ltd. File No. I-T-C-92-103

Application for Authority Pursuant
to Section 214 of the Communications
Act of 1934, as amended, to Establish
Channels of Communication Between the
United States and Intelsat Satellites
for the Provision of International
Business and Video Services Between
the United States and Guatemala, and
Points Beyond

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: March 27, 1992; Released: April 7, 1992

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested application requesting authority pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require its grant.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-92-103 IS GRANTED and Latelco Partners, Ltd. (Latelco) is authorized to establish channels of communication between appropriately licensed earth stations in the United States and INTELSAT satellites for the provision of international business service (IBS) and international video services between the United States and Guatemala, as well as points beyond.

3. IT IS FURTHER ORDERED that the authority granted herein for Latelco to establish channels of communication between the appropriately licensed earth stations in the United States and INTELSAT satellites does not dispense with the requirement that all such earth stations must be authorized under Title III of the Communications Act of 1934, as amended, to communicate with those satellites.

4. IT IS FURTHER ORDERED that the applicant shall obtain any necessary operating agreements in each of the countries to which it will provide service and shall file them with the Commission within 30 days of their execution.

5. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

6. IT IS FURTHER ORDERED that the applicant shall file the annual reports to overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R §43.61.

7. IT IS FURTHER ORDERED that the applicant shall file semi-annual circuit addition reports required under Section 63.10(b) of the Commission's Rules, 47 C.F.R. §63.10(b).

8. This authorization is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*See* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

IDB COMMUNICATIONS GROUP, INC. File No. I-T-C-91-195

For Authority Pursuant to Section 214 of the Communications Act of 1934 to Establish Channels of Communication Between the U.S. and the U.S.S.R. via the Soviet Statsionar 26 Satellite System for the Provision of International Television Service and Private Line Services Not Interconnected with the Public Switched Network

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

Adopted: March 30, 1992; Released: April 7, 1992

By the Chief, International Facilities Division:

1. The Commission has before it an application filed by IDB Communications Group, Inc. (IDB) requesting authority pursuant to Section 214 of the Communications Act of 1934, as amended, to establish channels of communication between the United States and the Union of Soviet Socialist Republics[1] via the Soviet Statsionar 26 Satellite System[2] for the provision of international television service and private line services not interconnected with the public switched network. The applications were placed on public notice. No comments were received.

2. IDB is an international common carrier currently authorized to provide a range of international services, including International Business Service (IBS), television, and program audio services between the U.S. and the Soviet Union and certain Eastern European countries. IDB submits that the fast-paced changes in the Soviet Union during the past several years have led to a skyrocketing demand for high quality telecommunications services between the U.S. and countries formerly comprising the Soviet Union for news, sports and entertainment programming between these two countries. In addition, IDB notes that the growth of East-West commerce has greatly increased the demand of U.S. and other business enterprises for reliable corporate communications between the U.S. and the European nations formerly comprising the Soviet Union.

3. IDB believes that the present facilities between the U.S. and the former Soviet Union are inadequate because there is insufficient transponder capacity for certain services at certain times. IDB asserts that the ability to use Statsionar 26 will provide additional circuits on an alternate and reliable facility, and will increase route diversity. Also, IDB asserts that Stationar 26 is deemed very important to the Soviet Union, and thus, approval of this application will promote international comity by accommodating the needs of the Soviet Union. IDB further states that the use of Statsionar 26 will rapidly expand international television services and private line communications because there will be substantially reduced capital investment demands on the appropriate telecommunications ministries and on private industry. Because Statsionar 26 earth stations and technical equipment are already installed and operating throughout the former Soviet Union, IDB believes it can provide cost-effective television transmission and private line communications in a very short time to the cities which do not have INTELSAT earth station facilities. Consequently, IDB states that using Stationar 26 will obviate, at least in the short run, the need to construct costly new INTELSAT earth station facilities which would not be built in the near future because the level of traffic could not justify the construction and operation costs.

4. IDB does not anticipate any economic harm to INTELSAT as a result of its proposed limited use of Stationar 26. IDB requests that the Commission, in coordination with other appropriate U.S. government agencies and Comsat, initiate and complete consultation with INTELSAT pursuant to Article XIV(d) of the INTELSAT Agreement for IDB's proposed use of Statsionar 26. IDB requests that any technical consultation which may be required be initiated immediately.

5. IDB asserts that its provision of international television and private line service will comply with the rules governing the use and operation of separate satellite systems insofar as these rules prohibit separate systems from carrying public switched traffic.[3] IDB states that it will not interconnect the international television or private line circuits it provides with the Public Switched Telephone Network (PSTN).

I. DISCUSSION

6. The subject application proposes the use of non-INTELSAT space segment facilities to provide international television and private line service not interconnected with the public switched network. The Satellite Act provides for U.S. participation and support of the INTELLSAT global commercial satellite system. Although the United States is a Party to the INTELSAT Agreement and is committed to a strong, viable INTELSAT system, the Satellite Act clearly does not require or contemplate the sole use of INTELSAT to satisfy U.S. requirements for international satellite services. It specifically provides for the creation of additional satellite systems if ". . . required to meet the unique governmental needs or if otherwise required in the national interest." 47 U.S.C. §701(d).[4] The Executive Branch determines whether the use of non-INTELSAT facilities is in the national interest.[5]

7. In previous applications involving use of the Intersputnik system, the State Department enumerated conditions upon which the Commission may authorize private line service consistent with U.S. foreign policy and the national interest.[6] The State Department supports authorizing private line service as proposed in the previous applications. However, because it is concerned that commercial satellite systems cannot effectively engage in price competition with non-commercial systems, the State Department requests that the authorizations be granted subject to review after six months by the Commission and the Executive Branch. The State Department believes that the six month review will enable a future examination of potential migration of traffic from commercial systems, as

well as a review of any intervening market mechanisms which might obviate any existing concerns. Although Statsionar 26 system is separate from the Intersputnik system, we believe those same conditions imposed on the Intersputnik system should be applicable here.

8. We determine here that the applicant has satisfied the public interest standard of the Communications Act of 1934, as amended, 47 U.S.C. §214 and 47 U.S.C. §301 *et seq.* and we grant its application subject to *inter alia*, the conditions set forth by the Executive Branch. The applicant proposes to use Statsionar 26 system for the provision of international television service and private line services not interconnected with the public switched network between the U.S. and the former Soviet Union. IDB cites inadequate INTELSAT space segment capacity and ground station facilities. Under similar circumstances, the Commission has previously authorized the use of the Intersputnik system to provide television news coverage and private line service between the U.S. and the U.S.S.R. and Eastern European countries which are not members of INTELSAT.[7] Further, the State Department has informed the Commission that U.S. obligations under the INTELSAT Agreement have been met since INTELSAT has favorably consulted the provision of non-switched services via the Stationar 26 system.[8] In light of these circumstances, we find that the limited use of Statsionar 26 system proposed herein, subject to the condition suggested by the State Department, will serve the public interest.

II. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that the application of IDB (File No. I-T-C-91-195) IS GRANTED, and the applicant is authorized to establish channels of communications via the Statsionar 26 satellite system between the U.S. and the former Soviet Union, for the provision of international television service and private line service not interconnected with the public switched network.[9]

10. IT IS FURTHER ORDERED that the initial total number of circuits authorized herein is two (2) 36-MHz video channels, plus six (6) T-1 (1.544 Mbps) private line circuits.

11. IT IS FURTHER ORDERED that the continued effectiveness of these authorizations is conditioned on the outcome of the review after six months by the State Department and the Commmission as specified in paragraph 11 of the Commission's Order DA 91-621 (*See* 6 FCC Rcd 2932 (1991)).

12. IT IS FURTHER ORDERED that IDB is authorized to provide international television service and private line services authorized herein using existing earth stations in the U.S. authorized to communicate with the Statsionar 26 satellite system at 155^0 West Longitudinal or future earth stations which may be so authorized. Should the applicant wish to construct its own earth station facilities to provide these services, an appropriate application under Title III of the Communications Act will be required.

13. IT IS FURTHER ORDERED that the applicant shall submit monthly reports detailing the number and capacity of private line circuits in use over the Statsionar 26 system. The reports shall also set forth the number of private line circuits IDB has in use over each communications system for the countries served by the Statsionar 26 system. These reports shall be filed no later than the 20th day of each month and shall include the required information for the previous month.

14. This order is issued pursuant to Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] For the purpose of this Order, we will construe all references to the former Soviet Union as referring to its successor.

[2] Soviet domestic ssatellite system located at 155^0 W.L.

[3] Establishment of Satellite Systems Providing International Communications, 101 F.C.C. 2d 1046 (1985) ("*Separate Systems Order*"), *recon.*, 61 R.R. 2d 649 (1986), *further recon.*, 1 FCC Rcd 439 (1986).

[4] Additionally, Congress has declared it to be U.S. policy ". . . to make available to consumers a variety of communications satellite services utilizing space segment facilities of INTELSAT and any additional such facilities which are found to be in the national interest . . ." and which are technically compatible with and avoid significant economic harm to the INTELSAT system. Pub. L. No. 99-93, 99 Stat. 425, §146, Aug. 16, 1985.

[5] Letter from George P. Schultz, Secretary of State, and Malcolm Baldridge, Secretary of Commerce, to Mark S. Fowler, Chairman, Federal Communications Commission (Nov. 28, 1984).

[6] Letter from Ambassador Bradley P. Holmes, Department of State to Chairman Alfred C. Sikes, Federal Communications Commission (Nov. 21, 1990).

[7] IDB Communications Group, Inc. *et al.*, 6 FCC Rcd 2932 (1991) and 7 FCC Rcd 1599 (1992); CICI, Inc., 6 FCC Rcd 4289 (1991).

[8] Letter from Steven W. Lett, Deputy Director for Satellite and Cable Policy, Department of State to George Li, Chief, International Facilities Division, Common Carrier Bureau, Federal Communications Commission (Dec. 18, 1991). *See also* BG-91-3E and BG-91-76E (Rev. 2).

[9] This authorization is not to be construed as permitting the provision of any service between earth stations located within the United States.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

ADAMS TELEGRAPH COMPANY, INC. File No. I-T-C-92-054-TC

Application for Transfer of Control
pursuant to Section 214 of the
Communications Act of 1934, as amended

MEMORANDUM, OPINION, AND ORDER

Adopted: March 30, 1992; Released: April 7, 1992

By the Chief, International Facilities Division:

1. On December 3, 1991, Adams Telegraph Company, Inc. (Adams) filed the above-captioned application pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and Section 63.01 of the Commission's Rules, 47 C.F.R. § 63.01, requesting authority to transfer control of Adams to its minority shareholder. The application was put on public notice on December 11, 1991, and no comments were received.

2. Adams states that it is a Florida corporation. It provides international facsimile and switched voice services by the resale of the services of AT&T and provides international telex and telegram service by the resale of the international telex services of ITT World Communications, Inc.[1] Adams operates under the regulatory requirements established for non-dominant international resale carriers in *International Competitive Carrier Policies*.[2]

3. The application states that Armando Santone, a ten percent minority shareholder of Adams, wishes to purchase the remaining 90 percent of Adams stock now held by Donald Sutton, the majority shareholder. Mr. Sutton is a U.S. citizen, and Mr. Santone is a Brazilian citizen. According to the application, Mr. Santone has no direct or indirect interest of any sort in any foreign telecommunications entity, so that Adams would remain a non-dominant international common carrier.[3] The application further states that the operations of the company will not change in any way as a result of this transaction, except to the extent that Mr. Santone is able to enhance Adams' business opportunities.

4. The application states that the proposed transaction will be in the public interest in that it will permit Mr. Santone to assist the corporation to grow in these troubled times because of his extensive business contacts. It adds that Adams is a new and still very small company, located only in the south Florida market, and it continues to possess no market power in the international telecommunications market. This transaction, according to the application, should allow Adams to attract a substantial number of new customers and give consumers more alternatives in the marketplace.

5. In view of the foregoing, we conclude that the transfer of control of Adams to Mr. Santone will serve the public interest. It will permit the corporation to grow and attract new customers. It will also provide more alternatives in the international switched services market. We note that after the proposed transfer of control, Adams will continue to be subject to the streamlined regulatory requirements for non-dominant international telecommunications carriers.

6. Accordingly, IT IS ORDERED that the application of Adams Telegraph Company, Inc., File No. I-T-C-92-054-TC, IS GRANTED and we consent to the transfer of control of Adams and the Section 214 authorization originally granted in File No. I-T-C-89-033 (*see* n.1) to Armando Santone.

7. IT IS FURTHER ORDERED that Adams must continue to maintain tariffs pursuant to Section 203 of the Communications Act of 1934, as amended, 47 U.S.C. §203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this order.

8. IT IS FURTHER ORDERED that Adams must file annual reports of overseas telecommunications traffic as required by Section 43.61 of the Commission's Rules, 47 C.F.R. § 43.61.

9. IT IS FURTHER ORDERED that, in accordance with Adams' previous authorization (*see* n.1), Adams is limited under this order to the provision of:

a. international facsimile service by the resale of the International Message Telephone Service set forth in AT&T Tariff FCC No. 1 between the contiguous U.S. and those points listed in *Adams Authorization*, App. A (*see* n.1);

b. international switched voice service by the resale of the International Message Telephone Service set forth in AT&T Tariff FCC No. 1 between the contiguous U.S. and those points now or hereinafter listed in said AT&T tariff;

c. international telex service by the resale of the International Telex Service set forth in ITT Tariff F.C.C. No. 12 between the contiguous U.S. and those points now or hereinafter listed in said ITT tariff; and

d. international telegram service by the resale of the International Telex Service set forth in ITT Tariff F.C.C. No. 12 between the contiguous U.S. and those points listed in *Adams Authorization*, App. B (*see* n.1).

10. IT IS FURTHER ORDERED that nothing in this authorization should be construed to include authorization for the transmission of money in connection with the services the applicant seeks authority to provide. The transmission of money is not considered to be a common carrier service. Therefore, nothing in this Order should be construed as containing authority for the transmission of money.

11. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] *See* Adams Telegraph Company, Inc., File No. I-T-C-89-033, 4 FCC Rcd 1646 (1989) (hereinafter, *Adams Authorization).*

[2] *International Competitive Carrier Policies*, 102 FCC 2d 812 (1985), *recon. denied*, 60 RR 2d 1435 (1986) (hereinafter *International Competitive Carrier Policies).*

[3] *Id.*, n.74.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TELESPHERE COMMUNICATIONS, INC. File No. I-T-C-88-088
File No. I-T-C-90-107-TC

Cancellation of Section 214 Authorization to Resell Switched Telecommunications Services to International Locations

INTERNATIONAL TELECHARGE, INC. File No. I-T-C-92-064-TC

Application for Transfer of Control Pursuant to Section 214 of the Communications Act of 1934, as Amended

MEMORANDUM, OPINION, AND ORDER

Adopted: March 30, 1992; Released: April 7, 1992

By the Chief, International Facilities Division:

1. On December 16, 1991, International Telecharge, Inc. (ITI), filed the above-captioned application pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and Section 63.01 of the Commission's Rules, 47 C.F.R. § 63.01, requesting authority to transfer control of ITI and its Section 214 authorization to Ronald J. Haan *nunc pro tunc*. The application was put on public notice on December 26, 1991, and no comments were received. On February 26, 1992, Telesphere Communications, Inc. (TCI), filed a letter requesting cancellation, without prejudice, of its currently unused Section 214 authorization to resell the switched voice services of other common carriers between the United States and international locations. TCI is currently the subject of bankruptcy proceedings involving both of these transactions.

2. TCI is a Delaware corporation. It is a holding company for two subsidiaries, Telesphere Network, Inc. (TNI) and Telesphere Limited, Inc.[1] TCI and TNI are principally nondominant domestic common carriers that have also been granted authority to resell the switched voice services of other common carriers between the United States and international locations.[2] They operate under the regulatory requirements established for non-dominant international carriers in *International Competitive Carrier Policies*.[3] As a result of bankruptcy proceedings and related business changes, TCI's letter states that TCI and TNI currently have no customers and do not provide any international or other telecommunications services.

3. International Telecharge, Inc. (ITI) is a publicly held Delaware corporation authorized pursuant to Section 214 to operate as an international resale carrier of switched voice services.[4] ITI is non-dominant and subject to streamlined regulation in accordance with *International Competitive Carrier Policies*. ITI also provides nationwide domestic interstate resale service on a non-dominant basis. ITI's application states that no single of its shareholder holds a majority of ITI's shares and *de jure* control is spread among ITI's many shareholders.

4. Ronald J. Haan is an individual U.S. citizen. He has served as chief executive officer of several telecommunications companies, including National Telephone Services, Inc. (NTS), which offered operator-assisted long distance services until it was acquired by TCI in 1990.

5. The application states that TCI and TNI are currently the subject of bankruptcy proceedings in Illinois. Pursuant to an Order of the bankruptcy court, TCI and TNI entered into agreements to sell certain of their assets to ITI in a complicated series of transactions. The bankruptcy court plan involved the sale of certain assets of TCI and TNI to Mr. Haan's wholly owned subsidiary, R. Haan Ventures, Inc. (RHVI) for $17 million. In turn, RHVI would transfer certain operator service assets of TCI and TNI to ITI, and Mr. Haan individually would acquire control of ITI by purchasing 30 percent of ITI's stock and gaining control of the board of directors. Due to the nature of the bankruptcy proceedings, the parties have formally completed the part of the transaction in which certain ITI stock was sold to Mr. Haan and other parts of the transactions are occurring. The parties state that they do not anticipate that the transaction will result in material changes in the management structure of ITI. ITI will continue to offer service under its own authorization and tariff at the Commission. However, the parties state that the transaction will enable Mr. Haan to use his extensive experience in the industry to lead a financially strengthened ITI in the effort to serve its existing customers, the former customers of TCI and TNI, and new customers.

6. TCI states that because it has no international resale service customers, cancellation of its Section 214 authorization will not adversely affect users or the public interest. ITI's transfer application says that approval of the requested authority will permit ITI to compete more effectively in the international switched voice service marketplace. The applicants state as a result of the proposed transaction, the public in areas presently served will continue to receive the same low-cost high-quality service with only a change in the controlling interest of the service provider. They add that the transaction will be handled in such a way that customers will not experience confusion or service disruption. In addition, they state that the benefits of this transaction will eventually reduce costs and enable ITI to reduce rates and increase profitability over time. Therefore, the parties state that the proposed transaction is in the public interest.

7. In view of the foregoing, we conclude that the transfer of control of ITI and its Section 214 authorization to Ronald J. Haan and the cancellation, without prejudice, of TCI's and TNI's currently unused Section 214 authorizations will serve the public interest. These transactions should lead to lower costs and increased competition.

8. Accordingly, IT IS ORDERED that the request of Telesphere Communications, Inc., IS GRANTED and we find that the cancellation, without prejudice, of its currently unused Section 214 authorizations, File Nos. I-T-C-88-088 and I-T-C-90-107-TC (*see* n.2), will not adversely affect the public interest.

9. IT IS FURTHER ORDERED that, pursuant to Section 214 of the Communicatiions Act of 1934, as amended, 47 U.S.C. § 214, and Section 63.01 of the

Commission's Rules, 47 C.F.R. § 63.01, the application of International Telecharge, Inc., File No. I-T-C-92-064-TC, IS GRANTED and we consent to the transfer of control of ITI and the Section 214 authorization originally granted in File No. I-T-C-87-066 (*see* n.4) to Ronald J. Haan *nunc pro tunc*.

10. IT IS FURTHER ORDERED that ITI must continue to maintain tariffs pursuant to Section 203 of the Communications Act of 1934, as amended, 47 U.S.C. §203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this order.

11. IT IS FURTHER ORDERED that ITI must file annual reports of overseas telecommunications traffic as required by Section 43.61 of the Commission's Rules, 47 C.F.R. § 43.61.

12. IT IS FURTHER ORDERED that ITI is limited, under this order, to the provision of international switched voice services by the resale of the international switched voice services set forth in AT&T Tariffs FCC Nos. 1 and 2, MCI Tariff FCC No. 1, US Sprint Tariffs FCC Nos. 1 and 2, Allnet Tariff FCC No. 1, and Satellite Business Systems Tariff FCC No. 4 between the U.S. and those points listed in the aforementioned tariffs in accordance with the above-captioned applicant's previous authorization (*see* n.4).

13. IT IS FURTHER ORDERED that nothing in this authorization should be construed to include authorization for the transmission of money in connection with the services the applicant seeks authority to provide. The transmission of money is not considered to be a common carrier service. Therefore, nothing in this Order should be construed as containing authority for the transmission of money.

14. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] We will not include any further discussion of Telesphere Limited, Inc., because it does not hold any international authorizations.

[2] *See Telesphere Network, Inc.*, File No. I-T-C-88-088, 3 FCC Rcd 2728 (1988), and *National Telephone Services, Inc. and Telesphere Communications, Inc.*, File No. I-T-C-90-107-TC, 5 FCC Rcd 5233 (1990).

[3] Policies, 102 FCC 2d 812 (1985), *recon. denied*, 60 RR 2d 1435 (1986) (hereinafter *International Competitive Carrier Policies)*.

[4] *See International Telecharge, Inc.*, File No. I-T-C-87-066, 2 FCC Rcd 1782 (1987).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-65

In the Matter of

Amendment of Section 73.202(b), RM-7938
Table of Allotments,
FM Broadcast Stations.
(Gladwin, Michigan)

NOTICE OF PROPOSED RULE MAKING

Adopted: March 24, 1992; Released: April 8, 1992

Comment Date: May 29, 1992
Reply Comment Date: June 15, 1992

By the Acting Chief, Allocations Branch:

1. The Commission has before it for consideration a petition for rule making filed by Michigan Radio Group, Inc. ("petitioner") licensee of Station WMZX(FM), Channel 280A, Owosso, Michigan, seeking the deletion of vacant Channel 280A at Gladwin, Michigan. Petitioner submitted information in support of the proposal.

2. Petitioner's proposal requests the deletion of the Gladwin channel to accommodate its application for Station WMZX(FM), Owosso, to increase power from three kilowatts to six kilowatts. Petitioner states that Channel 280A was allotted to Gladwin in MM Docket 88-620.[1] *See* 4 FCC Rcd 8486 (1989). Petitioner further states that the channel is vacant with no applications on file at the Commission. According to petitioner, deleting the channel at Gladwin would cause no harm to the Gladwin area, as it will continue to be served by Stations WGDN-FM and WGDN-AM. In the event an application is filed for Channel 280A at Gladwin, petitioner requests that the channel be site restricted. Petitioner states that site restricting Channel 280A at Gladwin will allow Channel 280A at Owosso to operate as a six kilowatt facility and will also allow the Gladwin channel to be applied for at six kilowatts rather than three kilowatts.

3. We believe the public interest would be served by the deletion of Channel 280A at Gladwin, Michigan, or, should an application be filed, the imposition of a site restriction on Channel 280A to accommodate Channel 280A at Owosso. An engineering analysis has determined that Channel 280A can be used as a six kilowatt facility at a site 10.5 kilometers (6.5 miles) west of the community.[2] Since Gladwin is located within 320 kilometers (200 miles) of the U.S.-Canadian border, Canadian concurrence has been obtained for this allotment. We note that the new site for Channel 280A at Gladwin is short-spaced to Station WFMA, Channel 280A, Mio, Michigan. However, the construction permit for Station WFMA was modified to specify operation on Channel 230C2 in MM Docket No. 88-260. *See* 4 FCC Rcd 2640 (1989). This action was effective May 15, 1989. If Channel 280A is retained in Gladwin as a six kilowatt facility, a filing window will be opened upon termination of this proceeding.

4. We seek comments as to whether we should delete Channel 280A at Gladwin or retain the channel with a site restriction. Since Channel 280A was allotted to Gladwin without a site restriction, we request petitioner to provide reasonable assurance that transmitter sites conforming to the site restriction are available. *See Cave City and Radcliff, Kentucky, and Santa Claus, Indiana* (MM Docket No. 92-21, released February 12, 1992).

5. In view of the above, the Commission believes it is in the public interest to propose amending the FM Table of Allotments, Section 73.202(b) of the Commission's Rules with respect to the following community:

OPTION I

	Channel No.	
City	Present	Proposed
Gladwin, Michigan	276A,[3] 280A	276A

OPTION II

Gladwin, Michigan	276A, 280A	276A, 280A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **May 29, 1992,** and reply comments on or before **June 15, 1992,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

John F. Garziglia
Howard J. Barr
Pepper & Corazzini
200 Montgomery Building
1776 K Street, N.W., Suite 200
Washington, D.C. 20006

[1] A filing window for Channel 280A at Gladwin was opened on January 23, 1990, and closed on February 22, 1990.
[2] The coordinates for Channel 280A, Gladwin, are 44-00-47 and 84-36-47.
[3] The license for Station KOFM, Channel 276A, was modified in MM Docket No. 89-251 to specify operation on Channel 276C3. *See* 5 FCC Rcd 2152 (1990).

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required*. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures*. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service*. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies*. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings*. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-66

In the Matter of

Amendment of Section 73.202(b), RM-7940
Table of Allotments,
FM Broadcast Stations.
(Sun City, Arizona)

NOTICE OF PROPOSED RULE MAKING

Adopted: March 24, 1992; Released: April 8, 1992

Comment Date: May 29, 1992
Reply Comment Date: June 15, 1992

By the Acting Chief, Allocations Branch:

1. Before the Commission for consideration is the petition for rule making filed on behalf of Resource Media, Inc. ("petitioner"), licensee of Station KONC-FM, Channel 292A, Sun City, Arizona, requesting the substitution of Channel 292C2 for Channel 292A and modification of its license to specify operation on the higher class channel. Petitioner failed to state its intention to apply for Channel 292C2, if allotted to Sun City, and is requested to do so in its comments.

2. A staff engineering analysis reveals that the site specified by the petitioner would place the transmitter for Channel 292C2 a distance of 42.3 kilometers north of the community.[1] Additionally, since Sun City is located within 320 kilometers (199 miles) of the Mexican border, the Commission must seek concurrence of the Mexican government in this proposal.

3. Although the petitioner's specified site complies with the minimum distance separation requirements of the Commission's Rules, we question whether the proposal would observe the technical requirements of Section 73.315 which requires that a 70 dBu contour encompass the entire proposed community of license from the transmitter site. A staff engineering analysis reveals that the *average terrain elevation* at the petitioner's intended site is 779 meters above mean sea level ("AMSL"). A conventional Class C2 station, operating at maximum facilities, would utilize an antenna *height above average terrain* ("HAAT") of 150 meters and an effective radiated power (ERP) of 50 kW. From the petitioner's intended site, it will be necessary for the station to operate at maximum Class C2 facilities in order for the 70 dBu signal to extend far enough in the direction of Sun City to encompass the entire community. Therefore, at the petitioner's intended site, the antenna radiation center would be 929 meters AMSL (779+150=929). We have determined that the *ground level* at the petitioner's specified site is 682 meters AMSL. Therefore, in order to attain an antenna radiation center of 929 meters AMSL, the antenna for Channel 292C2 must be 247 meters (810 feet) *above ground level* ("AGL") at the specified site (682+247=929). Conversely, we find that petitioner's proposed use of a 185 meter *above ground level* antenna at its specified site would result in an overall antenna height of 867 meters AMSL (682+185=867). As a result, the antenna radiation center would not exceed 88 meters HAAT (867-779=88). Combining an effective radiated power of 50 kW, with an antenna HAAT of 88 meters from the proposed site will not enable the 70 dBu signal to extend over the entire community of Sun City.

4. In view of the above, our evaluation of the petitioner's proposal, as presented, has preliminarily determined that a 70 dBu contour would not encompass Sun City from the specified site. Therefore, since the provision of a city-grade signal is an important public interest consideration, petitioner is requested to provide additional information in its comments to establish a *prima facie* showing of its ability to comply with the requirements of Section 73.315 of the Commission's Rules. If petitioner intends to pursue its specified site, it should also include evidence of FAA clearance for a tower of 247 meters (810 feet) at that location, as discussed above. Failure to provide the requested information could result in a denial of the proposal.

5. We believe the public interest would be served by proposing the substitution of Channel 292C2 for Channel 292A at Sun City, Arizona, since it could provide the community with an expanded coverage area FM service. As requested, we shall tentatively propose to modify the petitioner's license for Station KONC-FM to specify operation on Channel 292C2 in lieu of Channel 292A. Pursuant to the provisions of Section 1.420(g) of the Commission's Rules, we will not accept other expressions of interest in the use of Channel 292C2 at Sun City, or

[1] Coordinates at the petitioner's specified site for Channel 292C2 are 33-58-30 and 112-20-08. Since the petitioner's designated site is located farther from Sun City than the maximum distance (32.6 kilometers (20.2 miles)) the Commission normally assumes for the provision of city-grade coverage (3.16 mV/m), petitioner provided engineering information asserting that its proposal could comply with Section 73.315 of the Commission's Rules, based on actual terrain characteristics. In this regard, petitioner advises that the average terrain elevation at its proposed site is 779.4 meters. Based upon FAA approval of a tower 185 meters (607 feet) AGL (938.5 meters (3079 feet) AMSL), petitioner claims that the use of a tower 150 meters HAAT will extend the 70 dBu signal a distance of 46.7 kilometers on a bearing of 170 degrees, thereby encompassing the entire community of Sun City. *See Woodstock and Broadway, VA*, 3 FCC Rcd 6398 (1988). Petitioner advises that the average terrain and contour distance calculations are based on the NGDC 30 second terrain database and the Commission's F(50,50) curves. See Sections 73.313(d)(1)-(3) and 73.333.

Petitioner also advises that it has obtained reasonable assurance from the Arizona State Land Department that the intended site is available for a commercial lease, and, that they would consider an application for its use as a communications site.

require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

6. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the community listed below, as follows:

	Channel No.	
City	Present	Proposed
Sun City, Arizona	292A	292C2

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before **May 29, 1992,** and reply comments on or before **June 15, 1992,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Thomas J. Hutton, Esq.

Nancy L. Wolf, Esq.

Dow, Lohnes & Albertson

1255 - 23rd Street, NW

Washington, D.C. 20037.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules,* 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments,

reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-67

In the Matter of

Amendment of Section 73.202(b), RM-7945
Table of Allotments,
FM Broadcast Stations.
(McRae and Nashville, Georgia)

NOTICE OF PROPOSED RULE MAKING

Adopted: March 24, 1992; Released: April 8, 1992

Comment Date: May 29, 1992
Reply Comment Date: June 15, 1992

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Tifton Radio Partnership[1] ("petitioner"), requesting the substitution of Channel 237C3 for Channel 237A at Nashville, and the modification of Station WJYF(FM)'s license accordingly. In order to accommodate the upgrade at Nashville, petitioner also requests the substitution of Channel 274A for Channel 237A at McRae, Georgia. Petitioner states its intention to apply for Channel 237C3, if allotted.

2. In support of its proposal, petitioner submits an agreement with the licensee of Station WDAX(FM), Channel 237A, McRae, Georgia, consenting to the frequency change and site relocation. Petitioner states that it will reimburse the license of WDAX, Inc., for the costs associated with relocating its station in order to accommodate the upgrade at Nashville. Therefore, we need not issue an *Order to Show Cause* to the licensee of Station WDAX(FM), since the licensee has consented to the frequency change and site relocation.

3. We believe petitioner's proposal warrants consideration because the proposed substitution would provide Nashville with a wide coverage area FM service. Channel 237C3 can be allotted to Nashville in compliance with the Commission's minimum distance separation requirements at its current licensed site provided Channel 274A is substituted for Channel 237A at McRae, Georgia. Channel 274A can be substituted for Channel 237A at McRae in compliance with the Commission's minimum distance separation requirement with a site restriction 1.3 kilometers (0.8 miles) east,[2] in order to avoid a short-spacing to Station WBGA(FM), Channel 273C1, Waycross, Georgia, and a proposal to allot Channel 273C1 to Brunswick, Georgia. *See* 5 FCC Rcd 4014 (1990). We shall also propose to modify the license for Station WJYF(FM) to specify Channel 237C3 in accordance with Section 1.420(g) of the Commission's Rules.

4. In view of the fact that Nashville, Georgia, could receive a wide coverage FM channel the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Nashville, Georgia	237A	237C3
McRae, Georgia	237A	274A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **May 29, 1992,** and reply comments on or before **June 15, 1992,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Gary S. Smithwick
Smithwick & Belendiuk, P.C.
2033 M Street, N.W., Suite 207
Washington, D.C. 20036
(Attorney for Tifton Radio Partnership)

7. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Notice of Proposed Rule Making* to the licensee of Station WDAX(FM), as follows: WDAX, Inc., Highway 341 South, P.O. Box 1410, McRae, Georgia 31055.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from

[1] An assignment of license application (BALH-920107HG) was granted March 5, 1992, from Tift Area Radio to Tifton Radio Partnership.

[2] The coordinates for Channel 237C3 at Nashville are North Latitude 31-10-18 and West Longitude 83-21-57. The coordinates for Channel 274A at McRae are North Latitude 32-04-19 and West Longitude 82-52-43.

the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-5

In the Matter of

Amendment of Section 73.202(b), RM-7878
Table of Allotments,
FM Broadcast Stations.
(Oak Creek, Colorado)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: March 25, 1992; Released: April 8, 1992

By the Acting Chief, Allocations Branch:

1. The Commission considers herein the *Notice of Proposed Rule Making*, 7 FCC Rcd 505 (1992), issued in response to a petition for rule making filed on behalf of KFMU, L.P. ("petitioner"), licensee of Station KFMU(FM), Channel 280A, Oak Creek, Colorado, proposing the substitution of FM Channel 281C3 for Channel 280A and modification of the license accordingly to specify operation on the higher powered channel. Petitioner filed comments reiterating its intention to apply for Channel 281C3, if allotted. No other comments were received.

2. We believe the public interest would be served by substituting Channel 281C3 for Channel 280A at Oak Creek since it could provide the community with an expanded coverage area FM service. Therefore, in accordance with the provisions of Section 1.420(g) of the Commission's Rules, we will modify herein the license of KFMU, L.P., as requested. As stated in the *Notice*, Channel 281C3 can be allotted to Oak Creek at the petitioner's specified site,[1] consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **May 22, 1992,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the community listed below, as follows:

City	Channel No.
Oak Creek, Colorado	281C3

4. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of KFMU, L.P. for Station KFMU(FM), IS MODIFIED to specify operation on Channel 281C3 in lieu of Channel 280A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, **if the request is granted,** must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, KFMU, L.P., licensee of Station KFMU(FM), is required to submit a rule making fee in addition to the fee required for the applications to effectuate the upgrade.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] Coordinates used for Channel 281C3 at Oak Creek are 40-15-20 and 106-57-21.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-4

In the Matter of

Amendment of Section 73.202(b), RM-7880
Table of Allotments,
FM Broadcast Stations.
(Greenacres, California)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: March 26, 1992; Released: April 8, 1992

By the Acting Chief, Allocations Branch:

1. The Commission considers herein the *Notice of Proposed Rule Making*, 7 FCC Rcd 503 (1992), issued in response to a petition for rule making filed on behalf of Double D Broadcasting Company ("petitioner"), licensee of Station KRAB(FM), Channel 292A, Greenacres, California, proposing the substitution of FM Channel 291B1 for Channel 292A and modification of its license accordingly to specify operation on the higher powered channel. Petitioner filed comments reiterating its intention to apply for Channel 291B1, if allotted. No other comments were received.

2. We believe the public interest would be served by substituting Channel 291B1 for Channel 292A at Greenacres since it could provide the community with an expanded coverage area FM service. Therefore, in accordance with the provisions of Section 1.420(g) of the Commission's Rules, we will modify herein the petitioner's license for Station KRAB(FM), as requested. As stated in the *Notice*, Channel 291B1 can be allotted to Greenacres at the petitioner's specified site,[1] located 35.6 kilometers (22.1 miles) east of the community,[2] consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **May 22, 1992,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the community listed below, as follows:

City	Channel No.
Greenacres,[3] California	291B1

4. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Double D Broadcasting Company for Station KRAB(FM), IS MODIFIED to specify operation on Channel 291B1 in lieu of Channel 292A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, **if the request is granted,** must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Double D Broadcasting Company, licensee of Station KRAB(FM), is required to submit a rule making fee in addition to the fee required for the applications to effectuate the upgrade.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

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[1] Coordinates used for Channel 291B1 at Greenacres are 35-29-02 and 118-44-12.

[2] The *Notice* advised that while the petitioner's specified site is located 12.4 kilometers (7.8 miles) farther from Greenacres than the Commission assumes for the provision of city grade coverage (3.16 mV/m), petitioner demonstated that by employing maximum Class B1 facilities (*i.e.*, 25 kW at 100 meters HAAT), an unobstructed 70 dBu signal, computed in accordance with the Commission's standard prediction methods (§73.313(d)(1)-(3)), would extend 48.8 kilometers (30.2 miles) on a bearing of 251.8°, thus encompassing the entire community. *See Woodstock and Broadway, VA*, 3 FCC Rcd 6398 (1988).

[3] 47 CFR § 73.202(b), the Table of FM Allotments, lists the community as "Green Acres." The misspelling is corrected by our action herein.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-603

In the Matter of

Amendment of Section 73.202(b),	RM-7076
Table of Allotments,	RM-7319
FM Broadcast Stations.	
(Celina, Watertown and	
Baxter, Tennessee)[1]	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: March 26, 1992; Released: April 8, 1992

By the Acting Chief, Allocations Branch:

1. At the request of William O. Barry ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making*, 5 FCC Rcd 45 (1990), proposing the reallotment of vacant and unapplied for Channel 229A from Celina, Tennessee, to Watertown, Tennessee. Bayard H. Walters ("Walters") filed a counterproposal requesting the allotment of Channel 229C3 to Baxter, Tennessee, in lieu of Watertown.[2]

2. Petitioner filed comments stating he would not apply for Channel 229A if allotted to Watertown, Tennessee. As stated in the *Notice*, a showing of continuing interest is required before a channel will be allotted. It is the Commission's policy to refrain from making an allotment to a community absent an expression of interest. Since no other party has expressed such interest in pursuing the proposed reallotment of Channel 229A from Celina to Watertown, Tennessee, we shall dismiss petitioner's proposal to reallot Channel 229A from Celina to Watertown, Tennessee. *See, e.g., Joshua Tree, CA*, 54 FR 18557, May 1, 1989, *Senatobia, Mississippi*, 3 FCC Rcd 4000 (1988), and paragraph 2 of the Appendix of the *Notice*.

3. Walters requests the allotment of Channel 229C3 to Baxter, in order to provide that community with its first local aural transmission service. The dismissal of petitioner's proposal make a comparative analysis of the proposals unnecessary. Therefore, we believe the public interest would be served by adopting Walters' counterproposal since it could provide Baxter with its first local aural transmission FM service. Channel 229C3 can be allotted to Baxter in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.3 kilometers (2.7 miles) northwest to avoid a short-spacing to for Station WAYA-FM, Channel 230A, Spring City, Tennessee.[3] However, the issuance of a license for Channel 229C3 at Baxter may be withheld until Station WGSQ-FM, Channel 232A, Cookeville, Tennessee, is licensed on Channel 235C.[4]

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 19334, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **May 22, 1992,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Celina, Tennessee	–
Baxter, Tennessee	229C3

5. The window period for filing applications will open on **May 26, 1992** and close on **June 25, 1992.**

6. IT IS FURTHER ORDERED, That the petition for Rule Making filed by William O. Barry (RM-7076), requesting the reallotment of Channel 229A from Celina to Watertown, Tennessee, IS DISMISSED.

7. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this *Report and Order* to the licensee of Station WGSQ-FM, Cookeville, Tennessee, as follows: Cookeville Radio, 621 Mainstream Drive, 230, Nashville, Tennessee, 37228.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

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[1] The community of Baxter has been added to the caption.

[2] Walters' counterproposal (RM-7319) was placed on public notice on March 1, 1990, Report No. 1810.

[3] The coordinates for Channel 229C3 at Baxter are North Latitude 36-10-49 and West Longitude 85-40-29. Walters proposed coordinates of North Latitude 36-15-00 and West Longitude 85-36-00 with a site restriction of 11.3 kilometers (7.0 miles) north of Baxter. A Commission engineering analysis has determined that there may be a serious line-of-sight problem to Baxter from Walters' proposed site. Therefore, we will adopt the Commission's alternate, less restrictive site for this allotment.

[4] Station WGSQ-FM was modified from Channel 232A to Channel 234C in MM Docket No. 84-14. *See* 1 FCC Rcd 53 (1986). We will serve the licensee of Station WGSQ-FM with a copy of this *Report and Order*.

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN Docket No. 91-1

In the Matter of

Amendment of Part 15 of the
Commission's rules to Implement the
Provisions of the Television Decoder
Circuitry Act of 1990

MEMORANDUM, OPINION AND ORDER
(Proceeding Terminated)

Adopted: March 23, 1992; Released: April 9, 1992

By the Commission:

INTRODUCTION

1. The Commission hereby amends its rules and clarifies its policies applying to closed-caption decoders in television receivers. In particular, we are: 1) modifying our prohibition against shipping noncompliant television receivers, 2) clarifying our requirement for compatibility with cable television security systems, and 3) making several minor changes to the technical requirements. These actions are taken in response to a Petition for Reconsideration filed in this proceeding by the Consumer Electronics Group of the Electronic Industries Association (EIA/CEG).

BACKGROUND

2. On April 12, 1991, the Commission implemented the provisions of the Television Decoder Circuitry Act of 1990[1] (Decoder Act) and adopted closed-caption decoding requirements for television receivers.[2] These requirements include, among other things, marketing prohibitions against the manufacture, assembly, importation, or shipment in interstate commerce of noncompliant television receivers after July 1, 1993.[3] Also included is the requirement that closed-caption decoder circuitry in television receivers function properly when receiving signals from any cable television security system that was designed and marketed prior to April 5, 1991.[4]

3. In a Petition for Reconsideration filed on July 15, 1991, EIA/CEG asks that the Commission reconsider both the marketing prohibitions and the cable compatibility requirement, and make several minor changes to the technical requirements. Comments on the EIA/CEG petition were filed by twelve parties; reply comments were filed by five parties.[5]

DISCUSSION

Marketing prohibitions:

4. EIA/CEG is concerned that our prohibition against the shipment of noncompliant television receivers on or after July 1, 1993, would unreasonably restrict the marketing of television receivers manufactured before that date that are not required to contain closed-caption decoder circuitry. Although the marketing prohibitions in the Decoder Act and the rules adopted in the *Report and Order* are similar,[6] EIA/CEG points out that the legislative history of the Decoder Act indicates that the shipping prohibition was intended to apply only to products manufactured on or after July 1, 1993.[7] To address this concern, EIA/CEG asks that we amend our rules to indicate that the marketing prohibitions place no restriction on the shipping or sale of television receivers that were manufactured before July 1, 1993. No commenting parties opposed EIA/CEG's request. We have examined the legislative history of the Decoder Act and concur with EIA/CEG that it reflects Congress' intent to have the law's requirements apply only to equipment manufactured on or after July 1, 1993. We have already indicated our agreement with respect to other marketing standards in the original *Report and Order*.[8] We are amending 47 CFR Section 15.119(a) as requested.

Compatibility with cable television security systems:

5. EIA/CEG, as well as five television receiver manufacturers and two potential manufacturers of closed-caption decoder circuitry, request that our cable compatibility requirement be eliminated or, alternatively, that television manufacturers be given additional time to comply.[9] These parties argue that: 1) the cable compatibility requirement is beyond the scope of this proceeding; 2) the requirement is overbroad; 3) the manufacturers of television receivers lack adequate technical information about existing cable security systems; 4) the burden of achieving compatibility between cable security systems and closed-caption decoder circuitry should not fall solely on television receiver manufacturers; and 5) closed-caption decoder circuitry might

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[1] Television Decoder Circuitry Act of 1990, Pub. L. 101-431. This act requires that, effective July 1, 1993, all new television receivers with pictures screens 13 inches or greater in diameter be equipped to display closed-captioned television transmissions using performance and display standards developed by the Commission in this proceeding.

[2] *See Report and Order*, GEN Docket No. 91-1, 6 FCC Rcd 2420.

[3] *See* 47 CFR Section 15.119(a).

[4] *See* 47 CFR Section 15.119(l). For convenience, we will refer to these requirements as cable compatibility requirements. Cable television security systems are used to prevent the unauthorized reception or copying of certain cable programming.

[5] Appendix A contains a list of the commenting parties.

[6] *See* Section 4(b) of the Decoder Act, *supra.*, and 47 CFR Section 15.119(a).

[7] *See* EIA/CEG petition at 5. *See also* H.R. Rep. No. 767, 101st Congress, 2d Session (1990) (House Report), at 15.

[8] *See* 6 FCC Rcd at 2433.

[9] *See* comments from EIA/CEG, Matsushita Television Company, Sanyo Manufacturing Corporation, Mitsubishi Electronics America, Zenith Electronics Corporation, Thomson Consumer Electronics, EEG Enterprises, and Motorola Inc.

defeat cable security systems, providing subscribers the ability to view unauthorized programming. In addition, television receiver manufacturers express particular concern about the ability of closed-caption decoder circuitry to function properly when television programming is processed through a new copy protection system developed by Eidak Corporation. The National Cable Television Association (NCTA) and three closed-caption program providers oppose elimination of the cable compatibility requirement. They argue that the Commission must require cable compatibility in order to ensure that the public will be able to view closed captions on cable television channels that have been scrambled or copy protected, and to ensure that the benefits of the Decoder Act are achieved.

6. *Notice.* EIA/CEG argues the cable compatibility requirement was not proposed in the *Notice of Proposed Rule Making (NPRM)* and is unsupported by the record in this proceeding. Although we did not specifically address the problem of cable compatibility in the *NPRM*, we did indicate clearly that the purpose of this proceeding was to implement the provisions of the Decoder Act.[10] Given the legislative history of the Decoder Act, we believe that cable compatibility was an issue Congress intended us to consider and include within our standards.[11] Moreover, since decoder standards could not function fully in the absence of cable compatibility standards,[12] we also believe "adoption of such standards is a logical outgrowth of the *NPRM*."[13] In their comments responding to the *NPRM*, NCTA and various manufacturers of cable security systems argue that cable compatibility was a matter requiring consideration. EIA/CEG and several other parties filed reply comments, raising some of the same concerns expressed in the reconsideration petition. We believe that the matter was thoroughly discussed, and that all parties had the opportunity to consider the imposition of a cable compatibility rule. The record is more than sufficient to justify the adoption of cable compatibility requirements.

7. *Breadth of the requirement.* EIA/CEG is concerned that the requirement that closed-caption decoder circuitry function properly when receiving signals from *any* cable television security system that was designed and marketed prior to April 5, 1991, is overbroad. Several different manufacturers have developed a variety of cable security systems over the years. EIA/CEG points out that some cable security systems are rarely used and some may be unknown to the television receiver manufacturers. Certain security systems, it is noted, can destroy a portion of the captioning information and thereby render it impossible to decode closed captions.[14] EIA/CEG argues that it is unreasonable to expect compatibility with rarely used systems, that to achieve compatibility on such a broad scale could be very expensive, and that, even in the absence of regulation, the marketplace will compel television manufacturers to develop closed-caption decoder circuitry that will function properly with the "large proportion of cable systems."

8. The National Captioning Institute (NCI), which manufactures and markets the only existing closed-caption decoders, indicates that its current decoders function properly with virtually all known cable security systems, and that for others to achieve similar compatibility should not be a serious problem. NCTA comments, as well, that the incorporation of circuitry that accommodates cable security techniques in closed-caption decoder circuitry is easily accomplished at negligible cost and should not result in manufacturing delays.

9. Based on the record in the original rule making proceeding, the comments filed on reconsideration and the legislative history of the Decoder Act, we conclude that the cable compatibility requirements should be retained with slight clarifications. The argument that the marketplace will provide a satisfactory solution to this problem is not acceptable. Although there are 24 million deaf or hearing-impaired people in the United States, as a group they represent a small portion of the viewing public. In the absence of legislation, no television manufacturer, with the exception of Sanyo in the early 1980's, has ever offered a television receiver with a built-in closed-caption decoder for sale.[15] Congress clearly determined that this situation would not be ameliorated by market forces. On the other hand, it was never our intent, nor, we believe, was it the intent of Congress, that television receiver manufacturers be responsible for achieving closed-caption decoder compatibility with unconventional cable security systems that are virtually unknown to the marketplace. It was also not our intent to hold television receiver manufacturers responsible for compatibility if vital captioning information has been destroyed by some outlying security system. We intend only that our compatibility requirement extend to all commonly known and used cable security systems that were designed and marketed prior to April 5, 1991, and are amending Section 15.119(l) appropriately. As a useful guide, we would expect closed-caption decoder circuitry manufactured under these rules to be compatible with cable security systems to the same extent as present decoders. With this clarification, television manufacturers should have the certainty they claim they require to complete their closed-caption decoder circuitry designs and meet the July 1, 1993 deadline.

10. *Technical information.* EIA/CEG indicates that television receiver manufacturers do not have sufficient technical information about existing cable security systems to ensure that their closed-caption decoder circuitry will function properly under *all* situations. Again, it is neces-

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[10] *See Notice of Proposed Rule Making*, GEN Docket No. 91-1, 6 FCC Rcd 449 (1991), at 1.

[11] The House Report accompanying the Decoder Act indicated that the Commission should "establish technical requirements that provide both for closed captioning and allow cable systems to continue to use existing security techniques..." This report also indicated that cable security techniques should not interfere with the public's ability to receive closed-captioned programming. *See* House Report at 15.

[12] *See Report and Order*, GEN Docket No. 91-1, 6 FCC Rcd 2432.

[13] *See Public Serv. Comm'n. of the District of Columbia v. FCC*, 906 F. 2nd 713 (1990).

[14] *See*, for example, the Declaration of David K. Broberg attached to EIA/CEG's reply comments, at 3-5.

[15] The Sanyo receivers were manufactured for NCI. Zenith Electronics Corporation also marketed television receivers, beginning in the mid-1980's, that could display closed captions if the closed-captioning information was transmitted using a different scheme.

sary to explain that Section 15.119(l) is not intended to be interpreted unreasonably. We do not intend television receiver manufacturers to have to accommodate, at great expense, atypically operating security systems. The record is clear that NCTA has provided, and undertakes to continue to provide, information concerning existing cable security systems. We also note that EIA/CEG has admitted that other features of television receivers already accommodate the characteristics of cable security systems with which they are used.[16] Obviously, even before the Decoder Act, the manufacturers of these receivers had learned to a significant extent how to achieve compatibility with cable security systems. Accordingly, we are not persuaded that any lack of information is likely to significantly inhibit the television receiver manufacturer's ability to comply with our cable compatibility requirement.

11. *Burden for compliance.* EIA/CEG argues that it is unfair to place the burden for compatibility solely on television receiver manufacturers.[17] EIA/CEG notes that the characteristics of the closed-caption signals that cable systems deliver to their subscribers are not regulated. It argues that, by not regulating cable systems in this regard, the effect of cable security systems on both existing closed-caption decoders and decoder circuitry built into television receivers will also be a problem. In the interim, however, the Commission has adopted new rules governing cable systems' delivery of closed-captioning data.[18] These rules require that (1) as of the effective date of those requirements, cable systems will be prohibited from deliberately removing closed-captioning data delivered to subscribers, and (2) effective July 1, 1993, cable systems shall deliver closed-captioning data intact and in a format that can be recovered and displayed by closed-caption decoders complying with the Decoder Act and Section 15.119 of our rules. We believe these rules, combined with the rules adopted in this proceeding, allocate the burden for compatibility in an appropriate and fair manner.

12. *Unauthorized use of cable programming.* EIA/CEG indicates that the closed-caption decoder circuitry that is developed might enable subscribers to defeat cable security systems and use television signals they are not authorized to use. However, NCTA states that while it is certainly possible to design decoder circuitry in a way that would defeat existing security systems, there is no reason to expect that manufacturers would do so in order to comply with our cable compatibility requirements. We agree. There is nothing in the record to suggest that manufacturers must or will use closed-caption decoder circuitry that will enable television viewers to use unauthorized programming.

13. *Eidak Copy Protection System.* One system that might be considered a cable security system, although it does not operate as a traditional scrambler of television signals, is the Eidak copy protection system. This system is designed to prevent the video taping of certain programs carried by a cable system or broadcast by a television station. The Eidak system dynamically changes the number of lines and the timing of the television picture. While these changes are not readily apparent to television viewers, video tape recorders, dependent on accurate and consistent timing, cannot copy Eidak-protected material. Unfortunately, existing closed-caption decoders, unable to locate line 21, also do not function properly when closed-caption information is processed by the Eidak system. Thus, television receiver manufacturers will need to develop and use special circuitry that is only necessary for compatibility with Eidak-processed signals. Eidak has provided in the record of this proceeding what appears to be an adequate approach for extracting closed-caption information from signals that have been modified by the Eidak copy protection system. This approach, according to Eidak, has already been included at only an incremental cost in integrated circuit technology being developed by NCI for use in television receivers that need to comply with our requirements. In an effort to be reasonable in our cable compatibility requirement and recognizing that the Eidak system is not yet widely used, we will provide television receiver manufacturers with additional time, until January 1, 1995, to incorporate Eidak compatibility within their closed-caption circuitry. By adopting this extension, we believe compatibility with the Eidak copy protection system can be achieved at reasonable cost. We do encourage that such compatibility be achieved sooner, if possible.[19]

Minor technical changes:

14. EIA/CEG and several commenters have suggested a number of minor changes to our technical requirements. These changes clarify the requirements and correct apparent conflicts and inaccuracies in the original standards. These changes are not controversial and are, for the most part, of an editorial nature. As such, they do not warrant further discussion. The attached rules, in Appendix B, reflect the changes we have made.

ORDERING CLAUSES

15. In accordance with the above discussion and pursuant to the authority contained in Section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), and sections 3 and 4 of the Television Decoder Circuitry Act of 1990, Public Law 101-431, IT IS ORDERED THAT the Petition for Reconsideration filed by the Consumer Electronics Group of the Electronic Industries Association IS GRANTED to the extent indicated herein and in all other respects IS DENIED. IT IS FURTHER ORDERED THAT Part 15 of the Commission's Rules and Regulations IS AMENDED as set forth in Appendix B below, effective 30 days after publication in the Federal Register.

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[16] *See ex parte* comments filed by EIA/CEG on September 20, 1991.

[17] In our *Report and Order*, we did place responsibility for compatibility with *future* cable security systems primarily on the manufacturers of those systems. *See Report and Order, supra.*, at 40.

[18] *See Report and Order*, MM Docket Nos. 91-169 and 85-38, FCC 92-61 (released March 4, 1992) at para. 62-65.

[19] We note that television receiver information that can be displayed on screen, such as volume level, channel indication, and picture-in-picture, appears to jump when the television is also displaying an Eidak-processed television signal. We presume that the marketplace will ultimately force television manufacturers to solve this problem. However, we note that the approach presented by Eidak to deal with closed-caption problems also eliminates this jitter.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

Comments on EIA/CEG's Petition for Reconsideration were received from:

CaptionAmerica

EEG Enterprises, Inc.

Matsushita Television Company

Mitsubishi Electronics America, Inc.

Motorola Inc.

National Cable Television Association, Inc. (NCTA)

National Captioning Institute (NCI)

Sanyo Manufacturing Corp.

Sony Corporation of America

The Caption Center - WGBH Educational Foundation

Thomson Consumer Electronics, Inc.

Zenith Electronics Corporation

Reply comments were received from:

CaptionAmerica

Consumer Electronics Group of the Electronic Industries Association (EIA/CEG)

EEG Enterprises, Inc.

The Caption Center - WGBH Educational Foundation

Thomson Consumer Electronics, Inc.

Written late-filed or *ex parte* comments were received from:

Consumer Electronics Group of the Electronic Industries Association (EIA/CEG)

Eidak Corporation

National Cable Television Association, Inc. (NCTA)

National Captioning Institute (NCI)

Bob Ungar, Legal Advisor, Federal Communications Commission, Office of Engineering & Technology

APPENDIX B

Part 15 of title 47 of the CFR is amended to read as follows:

PART 15 - RADIO FREQUENCY DEVICES

1. The authority citation for Part 15 continues to read as follows:

Authority: Sections 4, 302, 303, 304, and 307 of the Communication Act of 1934, as amended, 47 U.S.C. Sections 154, 302, 303, 304, and 307.

2. Section 15.119 is amended by adding a note to the end of paragraph (a); by revising the first sentence in paragraph (d); by revising paragraph (e)(1)(i); by removing the last three sentences in paragraph (e)(1)(ii); by revising the introductory text of paragraph (f); by removing paragraph (f)(1)(iii) and redesignating paragraphs (f)(1)(iv) through (f)(1)(xi) as (f)(1)(iii) through (f)(1)(x); by revising paragraphs (f)(1)(iii), (f)(1)(x), (f)(2)(i), (f)(2)(ii), (f)(2)(iii); by removing paragraph (f)(3)(i) and redesignating paragraphs (f)(3)(ii) through (f)(3)(v) as (f)(3)(i) through (f)(3)(iv); by revising paragraphs (f)(3)(iii) and (h)(1); by revising the first sentence in paragraph (i)(4); by revising the mnemonic of the first entry in the Miscellaneous Control Codes table following paragraph (i)(5); by revising the 32nd entry in Row 1 of the Preamble Address Code table following paragraph (i)(5); and by revising paragraphs (l) and (n)(6) to read as follows:

Section 15.119 Closed Caption Decoder Requirements for Television Receivers

(a) * * *

NOTE: This paragraph places no restriction on the shipping or sale of television receivers that were manufactured before July 1, 1993.

* * * * *

(d) Screen Format. The display area for captioning and text shall fall approximately within the safe caption area as defined in paragraph (n)(12) of this section. * * *

* * * * *

(e) * * *

(1) * * *

(i) The first type of addressing code is the Preamble Address Code (PAC). It assigns a row number and one of eight "indent" figures. Each successive indent moves the cursor four columns to the right (starting from the left margin). Thus, an indent of 0 places the cursor at Column 1, an indent of 4 sets it at Column 5, etc. The PAC indent is non-destructive to displayable characters. It will not affect the display to the left of the new cursor position on the indicated row. Note that Preamble Address Codes also set initial attributes for the displayable characters which follow. See paragraph (h) of this section and the Preamble Address Code table.

(ii) The second type of addressing code is the Tab Offset, which is one of three Miscellaneous Control Codes. Tab Offset will move the cursor one, two, or three columns to the right. The character cells skipped over will be unaffected; displayable characters in these cells, if any, will remain intact while empty cells will remain empty, in the same manner that a PAC indent is non-destructive.

(f) *Caption Mode.* There are three styles of presenting text in Caption Mode: roll-up, pop-on, and paint-on. Character display varies significantly with the style used, but certain rules of character erasure are common to all styles. A character can be erased by addressing another character to the same screen location or by backspacing over the character from a subsequent location on the same row. The entire displayed memory will be erased instantly by receipt of an Erase Displayed Memory com-

mand. Both displayed memory and non-displayed memory will be entirely erased simultaneously by either: the user switching receiver channels or data channels (C1/C2) or fields (F1/F2) in decoders so equipped; the loss of valid data (see paragraph (j) of this section); or, selecting non-captioning receiver functions which use the display memory of the decoder. Receipt of an End of Caption command will cause a displayed caption to become non-displayed (and vice versa) without being erased from memory. Changing the receiver to a non-captioning mode which does not require use of the decoder's display memory will leave that memory intact, and the decoder will continue to process data as if the caption display were selected.

(1) * * *

(iii) Each time a Carriage Return is received, the text in the top row of the window is erased from memory and from the display or scrolled off the top of the window. The remaining rows of text are each rolled up into the next highest row in the window, leaving the base row blank and ready to accept new text. This roll-up must appear smooth to the user, and must take no more than 0.433 seconds to complete. The cursor is automatically placed at Column 1 (pending receipt of a Preamble Address Code).

* * * * *

(x) A roll-up caption remains displayed until one of the standard caption erasure techniques is applied. Receipt of a Resume Caption Loading command (for pop-on style) or a Resume Direct Captioning command (for paint-on style) will not affect a roll-up display. Receipt of a Roll-Up Caption command will cause any pop-on or paint-on caption to be erased from displayed memory and non-displayed memory.

(2) * * *

(i) Preamble Address Codes can be used to move the cursor around the screen in random order to place captions on Rows 1 to 15. Carriage Returns have no effect on cursor location during caption loading.

(ii) The cursor moves automatically one column to the right after each character or Mid-Row Code received. Receipt of a Backspace will move the cursor one column to the left, erasing the character or Mid-Row Code occupying that location. (A Backspace received when the cursor is in Column 1 will be ignored.) Once the cursor reaches the 32nd column position on any row, all subsequent characters received prior to a Backspace, an End of Caption, or a Preamble Address Code, will replace any previous character at that location.

(iii) The Delete to End of Row command will erase from memory any characters or control codes starting at the current cursor location and in all columns to its right on the same row. If no displayable characters remain on a row after the Delete to End of Row is acted upon, the solid space (if any) for that element should also be erased.

* * * * *

(3) * * *

(iii) If the reception of data is interrupted during direct captioning by data for the alternate caption channel or for Text Mode, the display of caption text will resume at the same cursor position if a Resume Direct Captioning command is received and no Preamble Address Code is given which would move the cursor.

* * * * *

(h) *Character Attributes.*

(1) *Transmission of Attributes.* A character may be transmitted with any or all of four attributes: color, italics, underline, and flash. All of these attributes are set by control codes included in the received data. An attribute will remain in effect until changed by another control code or until the end of the row is reached. Each row begins with a control code which sets the color and underline attributes. (White non-underlined is the default display attribute if no Preamble Address Code is received before the first character on an empty row.) Attributes are not affected by transparent spaces within a row.

* * * * *

(i) * * *

(4) If the first transmission of a control code pair passes parity, it is acted upon within one video frame. * * *

MISCELLANEOUS CONTROL CODES

Data channel 1	Data channel 2	Mnemonic	Command description
14 20	1C 20	RCL	Resume Caption Loading.

* * * * *

PREAMBLE ADDRESS CODES

	Row 1	* * *
* * *		
Ident 24 Underline	5D	* * *

* * * * *

(1) *Compatibility with Cable Security Systems.* Certain cable television security techniques, such as signal encryption and copy protection, can alter the television signal so that some methods of finding line 21 will not work. In particular, counting of lines or timing from the start of the vertical blanking interval may cause problems. Caption decoding circuitry must function properly when receiving signals from cable security systems that were designed and marketed prior to **April 5, 1991.** Further information concerning such systems is available from the National Cable Television Association, Inc., Washington, DC, and from the Electronic Industries Association, Washington, DC.

* * * * *

(n) * * *

(6) *Displayable character* - Any letter, number or symbol which is defined for on-screen display, plus the 20h space.

* * * * *

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-67

In the Matter of

Revision of License Renewal
Announcement Requirements for
Low Power Television, Television
Translator, Television Booster,
FM Translator and FM Booster Stations

REPORT AND ORDER

Adopted: March 26, 1992; Released: April 9, 1992

By the Commission:

INTRODUCTION

1. This *Report and Order* ("*R&O*") amends the low power television ("LPTV") license renewal announcement requirements found in Section 73.3580 of the Commission's Rules, 47 C.F.R. § 73.3580.[1] Specifically, we modify the text and timing of the broadcast announcements required of locally originating LPTV operators to more accurately reflect LPTV licensing renewal obligations. Thus, these licensees will no longer be required to broadcast information suggesting that there is a public inspection file at the station containing the renewal application and other information on the license renewal process. In addition, we will adjust the timetable for LPTV broadcast renewal announcements to reflect the fact that these licensees do not necessarily operate on a set broadcast schedule.

BACKGROUND

2. At present, the Commission's Rules contain two different sets of license renewal announcement requirements for LPTV operators. Specifically, LPTV licensees that locally originate programming are governed by Section 73.3580(d)(1) and must broadcast their announcements on their stations, while other LPTV operators are subject to Section 73.3580(g) and are only required to publish their announcements in a local newspaper. Both types of announcements must contain basic facts informing the public that the licensee has applied for renewal of its license.

3. We adopted the *Notice of Proposed Rule Making* ("*Notice*") in this proceeding in response to a petition filed by Community Broadcasters Association ("CBA"), identifying problems with the text and timing of announcements required of locally originating LPTV operators.[2] One problem CBA identified stems from the requirement that locally originating LPTV operators must make various pre-filing and post-filing announcements at a number of specific times throughout the broadcast day. CBA pointed out that LPTV operators may not be able to comply with this timetable because they do not necessarily operate on a set broadcast schedule (and, indeed, are not required to so operate). Another problem is that the broadcast text contains statements that do not accurately reflect LPTV licensing renewal obligations. Specifically, the text implies that LPTV licensees must maintain a public inspection file at the station that contains the renewal application and information concerning the license renewal process. This *R&O* will resolve the problems identified by CBA.[3]

DISCUSSION

4. *Proposals.* The *Notice* sought comment on two basic proposals to modify LPTV announcement requirements and remedy inaccuracies in the Rules. The first proposal would simply allow LPTV licensees that locally originate programming to omit from their required broadcast announcements any reference to a public inspection file and to permit these licensees to make the broadcast of these announcements as closely as possible to the times now designated in the Rules.

5. The second proposal would extend the newspaper publication requirement, which now applies to non-originating LPTV licensees, to all LPTV operators, regardless of whether their stations locally originate programming. A newspaper notice would solve any problem an LPTV operator may have complying with a specific broadcast announcement schedule. Also, a newspaper text acceptable under the existing Rules does not contain the misleading statements found in the broadcast notice.[4] A variation of this second proposal was also suggested, which was to allow LPTV operators to choose between an over-the-air broadcast or a newspaper notice.

6. Both versions of this second proposal, however, raise another issue addressed in our *Notice*. At present, the newspaper notification requirement under Section 73.3580(g) does not specify that the broadcasters covered by this provision (*i.e.*, non-originating LPTV stations, TV translators, TV boosters, FM translators and FM boosters) must inform the public that it can participate in the renewal process. Broadcast notification under Section

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[1] The amended Rule is set forth in Appendix A.

[2] *See Notice of Proposed Rulemaking* in MM Docket No. 91-67, 6 FCC Rcd 1738 (1991).

[3] The renewal broadcast announcement text and other renewal provisions of Section 73.3580(d) were initially adopted in 1973 and were specifically drafted for radio and full-service television licensees. *See generally Report and Order* in Docket No. 19153, 43 FCC 2d 1, *recon. granted in part*, 44 FCC 2d 405 (1973). In extending those requirements to LPTV licensees that originate local programming, we inadvertently left the text of the broadcast announcement unchanged in a manner that does not reflect the differences of such licensees. *See Report and Order* in MM Docket No. 83-1350, 102 FCC 2d 295 (1984).

[4] *Compare* 47 C.F.R. § 73.3580(d)(4)(i) *with* 47 C.F.R. § 73.3580(g)(1)(ii)(A)-(G).

73.3580(d)(1), on the other hand, does have such a requirement. Our *Notice* therefore suggested extending the public participation notification to all Section 73.3580(g) licensees, regardless of whether they originate programming.

7. *Comments.* We received comment from three parties on these proposals.[5] CBA and KVC supported retaining the broadcast notice requirement for locally originating LPTV operators in some form, while HSN, urged the Commission to impose a newspaper notification requirement on all LPTV renewal applicants (in lieu of a broadcast notification requirement), regardless of whether they originate programming. HSN favored a newspaper notification requirement in order to further simplify the rules governing LPTV stations.[6] HSN also opposed a new requirement that would make the services now subject to a newspaper notice inform members of the public that they can participate in the renewal process. According to HSN, such a requirement is unnecessary for these services because they do not originate programming and there is no need to inform the FCC of the station's failure to adequately serve local programming needs.[7] CBA and KVC argued that a broadcast renewal announcement for locally originating LPTV stations is a more effective way for originating stations to reach interested members of the public, and that broadcast notification demonstrates the LPTV operator is serious about serving its community.[8]

8. *Decision.* We will continue to require locally originating LPTV operators to broadcast their renewal announcements, but we will clarify the requirements in the Rules to eliminate references that are inapplicable to LPTV licensees. We will not adopt a newspaper notice for locally originating LPTV operators. Our reasons for this decision are explained below.

9. Specifically, we have concluded that the best way to obtain informed comments about the licensee and past operations of a locally originating LPTV station is to require the broadcaster to notify its viewers over-the-air of its renewal application. We require full-service broadcasters to notify the public in this manner because such broadcasts are a more effective way of reaching those members of the public who watch or listen to the programming of that particular station. We believe this same rationale applies to LPTV licensees that offer local programming. Interested members of the public are more likely to see and hear an announcement broadcast on the station than they are to read an announcement in the newspaper.[9]

10. Therefore, LPTV operators that originate local programming will still be required to broadcast their renewal announcements. As specified in Appendix A, however, we are modifying those parts of Section 73.3580 that do not accurately reflect LPTV scheduling requirements and licensing obligations.[10] Thus, we will allow locally originating licensees to air their pre- and post-filing renewal announcements at times permitted by their broadcast schedule that are closest to the times now designated in the Rules for commercial TV stations. In addition, we will no longer require these licensees to make statements in their pre- and post-filing renewal announcements indicating that there is a public inspection file at the station containing the renewal application and other information on the license renewal process.[11]

11. Finally, we will require non-originating LPTV operators and FM and TV translators, now subject to a newspaper notice under Section 73.3580(g), to inform the public in the newspaper notice that it may participate in the renewal process. While these services do not originate programming, the Commission is interested in public comment on these services during renewal time on other matters (*e.g.*, on EEO or technical violations).[12]

CONCLUSION

12. For the reasons set forth above, and in the interest of eliminating unnecessary regulation and instituting effective and adaptive review of broadcast licensees, we amend our Rules in accordance with this *R&O*.

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[5] Comments were filed by KVC-TV13 ("KVC"), an LPTV station in Austin, Texas; Home Shopping Network Communications, Inc. ("HSN"), a licensee of one non-locally originating LPTV station and the permittee of three other LPTV facilities; and CBA, the original petitioner on this matter and the national trade association for LPTV licensees and permittees. CBA also filed reply comments.

[6] HSN Comments at 1.

[7] HSN Comments at 2-3.

[8] *See* CBA Comments at 3 and KVC Comments at 2. Also, HSN and KVC called for regulating LPTV stations like conventional television stations and for simplifying LPTV regulation generally. For example, KVC asserted that LPTV stations should be required to maintain a public inspection file. Because such requests are beyond the scope of the *Notice*, they will not be considered in this *R&O*.

[9] While a broadcast renewal announcement is the preferred way of informing the public of impending renewal, it is simply not technically feasible for non-originating stations, which will continue to be subject to the newspaper publication requirement.

[10] We will make some minor conforming edits to Sections 73.3580(g)(1)(ii)(G) and 73.3580(h). *See* Appendix A.

[11] We are not changing the statement in the broadcast text that the renewal application contains information about the station's performance during the prior license term, as CBA asked us to do in its petition. CBA interpreted this statement to mean past programming performance, and, therefore, to be inaccurate. However, we believe the statement to be factually correct to the extent it covers relevant performance matters (*e.g.*, compliance during the license term with equal employment opportunity guidelines).

[12] FM and TV boosters are not required to file separate assignment, transfer or renewal applications, which would be subject to public comment. *See Report and Order* in MM Docket No. 87-13, 2 FCC Rcd 4625, 4630, 4634 (1987), *modified in part on other matters*, 3 FCC Rcd 373 (1987). Therefore, as a housekeeping measure, we are deleting the references to these services in the relevant portions of Section 73.3580. *See* Appendix A. There is no need for these services to publish a newspaper notice if they do not have to file an assignment, transfer or renewal application separate from the primary station's application.

FINAL REGULATORY FLEXIBILITY ANALYSIS

13. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need and Purpose of this Action: This action is taken to clarify license renewal announcement requirements of low power television operators.

II. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis: No comments were submitted relative to the Initial Regulatory Flexibility Analysis

III. Significant Alternatives Considered and Rejected: The *Notice* in this proceeding offered proposals for modifying LPTV license renewal announcement requirements. One proposal would have extended the newspaper publication requirement, now applicable to non-originating LPTV licensees, to all LPTV operators. We also considered imposing a requirement on broadcasters now subject to a news paper notice (*i.e.*, non-originating LPTV stations, TV translators, TV boosters, FM translators and FM boosters) to inform the public that it may participate in the license renewal process. We have decided to adopt this proposal for non-originating LPTV stations, TV and FM translators. Another proposal, adopted in the *Report and Order*, allows LPTV licensees to omit from their required broadcast announcements any reference to a public inspection file or their prior performance record, and to permit these licensees to broadcast announcements as close as possible to the times now designated by the Rules. Adoption of this latter proposal will clarify the license renewal requirements of LPTV operators originating local programming.

The Secretary shall send a copy of this *R&O*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

ORDERING CLAUSES

14. Accordingly, IT IS ORDERED that pursuant to authority contained in Sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 303, Part 73 of the Commission's Rules **IS AMENDED** as set forth below in Appendix A.

15. **IT IS FURTHER ORDERED** that the amendments to 47 C.F.R. Part 73 adopted in the *Report and Order* will be effective on **May 26, 1992.**

16. Further information on this proceeding may be obtained by contacting Kathleen O'Brien Ham, Mass Media Bureau at (202) 632-7792.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

2. Section 73.3580 is amended by revising paragraphs (d)(1) and (g)(1)(ii)(G), by revising the first two sentences of paragraph (g) and the second sentence in paragraph (h), by redesignating existing paragraphs (d)(4)(i)(A) and (d)(4)(ii)(A) as (d)(4)(i)(B) and (d)(4)(ii)(B), by adding new paragraphs (d)(4)(i)(A) and (d)(4)(ii)(A) and by adding paragraphs (d)(4)(i)(B)(4), (d)(4)(ii)(B)(4) and (g)(1)(ii)(H) to read as follows:

§ 73.3580 Local public notice of filing of broadcast applications.

* * * * *

(d) * * *

(1) An applicant who files for renewal of a broadcast station license, other than a low power TV station license not locally originating programming as defined by § 74.701(h), an FM translator station or a TV translator station license, must give notice of this filing by broadcasting announcements on applicant's station. (Sample and schedule of announcements are below.) Newspaper publication is not required. An applicant who files for renewal of a low power TV station license not locally originating programming as defined by § 74.701(h), an FM translator station or a TV translator station license will comply with (g) below.

* * * * *

(4) * * *

(i) * * *

(A) An applicant who files for renewal of a low power TV station locally originating programming (as defined by § 74.701(h)) shall broadcast this announcement, except that statements indicating there is a public inspection file at the station containing the renewal application and other information on the license renewal process, shall be omitted.

(B) * * *

(4) For low power TV stations locally originating programming (as defined by § 74.701(h)), at the same time as for commercial TV stations, or as close to that time as possible.

(ii) * * *

(A) An applicant who files for renewal of a low power TV station locally originating programming (as defined by § 74.701(h)) shall broadcast this announcement, except that statements indicating there is a public inspection file at the station containing the renewal application and other information on the license renewal process, shall be omitted.

(B) * * *

(4) For low power TV stations locally originating programming (as defined by § 74.701(h)), at the same time as for commercial TV stations, or as close to that time as possible.

* * * * *

(g) An applicant who files for authorization or major modifications, or a major amendment thereto, for a low power TV, TV translator, TV booster, FM translator, or

FM booster station, must give notice of this filing in a daily, weekly or biweekly newspaper of general circulation in the community or area to be served. Likewise, an applicant for assignment, transfer or renewal, or a major amendment thereto, for a low power TV, TV translator or FM translator station, must give this same type of newspaper notice. * * *

(1) * * *

(ii) * * *

(G) A statement, if applicable, that the station engages in or intends to engage in rebroadcasting, and the call letters, location and channel of operation of each station whose signals it is rebroadcasting or intends to rebroadcast.

(H) A statement that invites comment from individuals who wish to advise the FCC of facts relating to the renewal application and whether the station has operated in the public interest.

(h) * * * However, an applicant for renewal of a license that is required to maintain a public inspection file, shall, within 7 days of the last day of broadcast of the required publication announcements, place in its public inspection file a statement certifying compliance with § 73.3580 along with the dates and times that the pre-filing and post-filing notices were broadcast and the text thereof.***

* * * * *

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCI TELECOMMUNICATIONS CORPORATION
Complainant,
Counterclaim-defendant,

v. File No. E-91-36

AMERICAN TELEPHONE
AND TELEGRAPH COMPANY,
Defendant,
Counterclaim-complainant.

FEDERAL COMMUNICATIONS COMMISSION

Gregory A. Weiss
Deputy Chief (Operations)
Enforcement Division
Common Carrier Bureau

ORDER

Adopted: March 31, 1992; Released: April 9, 1992

By the Deputy Chief, Enforcement Division, Common Carrier Bureau:

1. On December 21, 1990, MCI Telecommunications Corporation (MCI) (Complainant) filed the above-captioned complaint alleging that Defendant was unlawfully leveraging its dominant position in the 800 services market in order to sell other AT&T services. The Complainant alleged that AT&T's Tariff F.C.C. No. 12, Option 32, enabled AT&T to "bundle" its 800 services with other AT&T services in violation of Section 201(b) of the Communications Act (Act), 47 U.S.C. § 201(b). Defendant filed a counterclaim contending that MCI has engaged in precisely the same activity which MCI has alleged is a violation of Section 201(b) of the Act. Thus, AT&T concludes that if its activities constitute improper leveraging in violation of Section 201(b) then MCI's conduct is also unlawful.

2. On January 31, 1992, the Complainant and the Defendant filed Motions to Dismiss their respective claims. MCI's Motion to Dismiss states that the essential relief requested in its complaint, *i.e.*, Commission foreclosure of AT&T's bundling 800 service in Tariff 12 offerings, was granted by the Commission in another proceeding. AT&T subsequently filed a similar motion to dismiss its counterclaim against MCI stating that dismissal is warranted because the parties have mutually agreed to withdraw their respective claims, without prejudice.

3. On the basis of the statements contained in these Motions, we grant the Complainant's and Defendant's dismissal requests.

4. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 208, and authority delegated under 47 C.F.R. § 0.291, that the Motions to Dismiss the above-captioned complaint and counterclaim ARE GRANTED.

5. IT IS FURTHER ORDERED that the above-captioned complaint and counterclaim ARE DISMISSED WITHOUT PREJUDICE and this proceeding IS TERMINATED.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

ACC LONG DISTANCE CORP.
Complainant,

v. File No. E-91-94

YANKEE MICROWAVE, INC.,
Defendant.

MEMORANDUM OPINION AND ORDER

Adopted: March 30, 1992; Released: April 9, 1992

By the Deputy Chief, Enforcement Division, Common Carrier Bureau:

1. Yankee Microwave, Inc., (Yankee or Defendant) has asked the Commission to hold the above-captioned formal complaint proceeding in abeyance pending a court decision on issues raised by the complainant, ACC Long Distance Corp. (ACC or Complainant).[1] Those issues are whether rates Defendant charged a former customer, Petricca Communications Systems, Inc. (Petricca), were unlawful under Sections 201(b) and 202(a) of the Communications Act, 47 U.S.C. §§ 201(b), 202(a). Complainant has opposed such request.[2] For the reasons specified hereinafter, we deny Defendant's Motion.

2. In support of its Motion, Defendant contends that, for reasons of administrative economy, ACC should not be permitted to maintain an action before the Commission at the same time a prior contract action seeking identical relief is pending in court.[3] Defendant contends that the court should be permitted to decide whether it has primary jurisdiction to resolve issues raised by ACC's allegations that Yankee violated Sections 201 and 202 of the Communications Act or whether the court should refer those issues to the Commission.[4] Yankee further contends that a decision by the court on its contract claims could render the complaint moot.[5] Finally, Yankee contends that Section 4(j) of the Act gives the Commission power to defer action on the complaint until the court has acted.[6]

3. In opposition to Yankee's Motion, ACC contends, *inter alia*, that it is not pursuing identical issues in concurrent Commission and court proceedings contrary to the spirit of Section 207 of the Act,[7] as alleged by Yankee, because, unless and until Yankee decides whether or not to pursue a court case, "there is no court proceeding."[8]

4. While Defendant technically may not be seeking a stay of a Commission order or decision, it is seeking extraordinary relief similar to a stay *pendente lite*. Thus, it may be useful to examine factors or criteria that the Commission generally considers in determining whether or not to grant such a stay request.[9] Those criteria are: (1) Has the petitioner made a strong showing that it is likely to prevail on the merits? (2) Has the petitioner shown that without the requested relief, it will be irreparably injured? (3) Would issuance of a stay substantially harm other parties interested in the proceedings? (4) What action is in the public interest? *Virginia Petroleum Jobbers Association v. Federal Power Commission*, 259 F.2d 921 (D.C. Cir. 1958), *modified by Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977); *Comark Cable Fund III*, 104 FCC 2d 451, 456 (1985). Interexchange carriers (IXCs) such as Defendant are authorized to offer services pursuant to individually negotiated contracts provided such contracts are made generally available to similarly situated customers under substantially similar circumstances so as to comply with the nondiscrimination provisions of the Act.

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[1] "Motion to Hold in Abeyance", filed January 13, 1992 (Motion).

[2] Opposition to Motion to Hold in Abeyance, filed January 23, 1992 (Opposition). The Opposition was timely filed. *See* Letter from Chief, Formal Complaints and Investigations Branch, Enforcement Division, to Messrs. Russell D. Lukas and John D. Pellegrin (January 9, 1992).

[3] Motion at 6. Defendant filed a suit against Complainant in the United States District Court for the District of Massachusetts (the court) alleging, *inter alia*, that Complainant, Petricca and others had breached a contract, interfered with contractual relations, violated Massachusetts laws and the Racketeer Influenced and Corrupt Organization (RICO) federal statute. Yankee Microwave, Inc. v. ACC Corp., et al., No. 90-10296 WD (D. Mass. Feb. 2, 1990).

[4] Motion at 7-9. ACC raised these allegations as an affirmative defense to Yankee's breach of contract contentions.

[5] *Id.* at 9-11.

[6] *Id.* at 12. Section 4(j), 47 U.S.C. § 154(j), provides, in pertinent part, as follows:

> [t]he Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.

[7] Section 207 provides as follows:

> [a]ny person claiming to be damaged by any common carrier subject to the provisions of this Act may either make complaint to the Commission as hereinafter provided for, or may bring suit for the recovery of the damages for which such common carrier may be liable under the provisions of this Act, in any district court of the United States of competent jurisdiction; but such person shall not have the right to pursue both such remedies.

[8] Opposition at 6-7. On January 8, 1992, several days before Yankee's Motion was filed, the court had granted ACC's motion for summary judgment on Yankee's RICO claims and dismissed Yankee's state law claims for lack of federal subject matter jurisdiction. *See* transcript of the court's Oral Reasons for Judgment (copy attached to letter from A. Kimberly Matthews to Adrien R. Auger (Jan. 17, 1992). Yankee subsequently filed a complaint against ACC and others in the Superior Court for Berkshire County, Massachusetts, alleging violations of the Massachusetts Unfair and Deceptive Trade Practices statute, breach of contract, tortious interference with contractual relations, and other claims, Yankee Microwave, Inc. v. ACC Corp., No. 92-0065 (filed Feb. 5, 1992) (copy enclosed in letter from Russell D. Lukas to Gregory A. Weiss (Feb. 7, 1992)).

[9] *See also* Section 1.46 of the Commission's Rules which sets forth the Commission's policy that extensions of time "shall not be routinely granted."

Competition in the Interstate Interexchange Marketplace, 6 FCC Rcd 5880, 5903 (1991), *reconsideration pending*. Based on the record of the complaint proceeding here before us, Defendant has not made a strong showing that it is likely to prevail on the merits of the Section 202 issue raised by Complainant. Moreover, Defendant has not alleged that it would be irreparably injured if its Motion to defer this proceeding were not granted. Further, Defendant has not shown that ACC or possible other similarly situated customers of Defendant could not be substantially harmed by the indefinite delay Defendant seeks. Thus, Defendant has failed to persuade us that the extraordinary relief for which it has petitioned would be in the public interest.[10] Accordingly, we deny its Motion.

5. Accordingly, IT IS ORDERED, pursuant to authority delegated by Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, that the "Motion to Hold in Abeyance" filed by Yankee Microwave, Inc. on January 13, 1992, IS DENIED.

6. IT IS FURTHER ORDERED that the parties shall file briefs within 30 days of the release of this Order on the following issues:

(a) In providing telecommunications service to Petricca, did Yankee violate 47 U.S.C. § 201(b)?

(b) In providing telecommunications service to Petricca, ACC and others, did Yankee violate 47 U.S.C. § 202(a)?

7. IT IS FURTHER ORDERED that the parties may file reply briefs within 50 days of the release of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Gregory A. Weiss
Deputy Chief (Operations)
Enforcement Division
Common Carrier Bureau

[10] Defendant's Motion also could have been dismissed as contrary to the Commission's Rules because Defendant failed to "provide a proposed order for adoption, which appropriately incorporates the basis therefor" as required by Section 1.727(c) of the Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-61

In re Applications of

LRB BROADCASTING (hereafter "LRB")	File No. BPH-901218MI
DAVID WOLFE (hereafter "Wolfe")	File No. BPH-901219MI
ZENITRAM COMMUNICATIONS, INC. (hereafter "Zenitram")	File No. BPH-901220MG
PHILIP Y. HAHN (hereafter "Hahn")	File No. BPH-901220MK (DISMISSED HEREIN)

For Construction Permit
for a New FM Station on Channel 288A
in Brockport, New York

HEARING DESIGNATION ORDER

Adopted: March 23, 1992; Released: April 13, 1992

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Preliminary Matter.* An engineering review of the Hahn application reveals that the Hahn proposal does not comply with the provisions of the *Working Arrangement For Allotment And Assignment Of FM Broadcasting Channels 201-300 Under The Canadian-U.S.A. FM Broadcasting Agreement of 1947* ("Canadian Agreement"), and therefore must be dismissed as having been inadvertently accepted for filing.

3. The Brockport allocation in this proceeeding is a Class A allotment both domestically and internationally. The Canadian Agreement, *inter alia*, imposes strict limitations on the power and height of domestic FM stations situated within 320 kilometers of the Canadian border. An engineering review of the Hahn application indicates that the proposed effective radiated power (ERP) of 3.6 kilowatts (kW) exceeds the applicable limitation of 3 kW ERP. *See Canadian Agreement* at Section 2.2.

4. The Commission's rules for FM radio stations place the responsibility for compliance with the Canadian Agreement squarely on the applicant, not on the Commission's processing line. Applications that fail to comply with international broadcasting agreements are unacceptable for filing and are thus summarily dismissed. *See Pueblo Radio Broadcasting Service*, 5 FCC Rcd 6278 (1990); *cf. Kerrville Radio*, 2 FCC Rcd 3441, 3442 para. 8 (1987) (Commission's rules for FM radio stations place responsibility for compliance with U.S.-Mexican Agreement squarely on the applicant); *1010 Broadcasting, Inc.*, 59 RR 2d 1124, 1125-26 paras. 7-9 (1986) (same).

5. Consistent with the "hard look" processing procedures for new FM applications adopted in the *Report and Order* in MM Docket No. 84-750, 50 Fed. Reg. 19936 (May 13, 1985), it was Hahn's responsibility to review his application to ensure its acceptability. *See, e.g., R.A.D. Broadcasting Corporation*, 4 FCC Rcd 4772 (1989), *appeal dismissed*, No. 89-1413 (D.C. Cir. Feb. 27, 1990). The "hard look" procedures state that effective radiated power is evaluated in the course of an acceptability study and that this parameter may be affected by international agreements. Moreover, the instructions to FCC Form 301 admonish applicants to familiarize themselves with the Commission's rules, which make specific reference to the Canadian Agreement. *Cf. Kerrville*, 2 FCC Rcd at 3442. *Kerrville* and other precedents make clear that applicants are on notice that the provisions of international agreements may affect the acceptability of their applications. *See Malkan FM Associates v. FCC*, 935 F.2d 1313 (D.C. Cir. 1991). Accordingly, the Hahn application will be dismissed as inadvertently accepted for filing. *See Pike Family Broadcasting, Inc.*, 6 FCC Rcd 5552 (1991); *Quinto Broadcasting Corp.*, 6 FCC Rcd 5550 (1991).

6. *Environmental.* Our engineering study based upon OST Bulletin No. 65, October, 1985 entitled "Evaluating Compliance with Specific Guidelines for Human Exposure to Radiofrequency Radiation" reveals that Wolfe and Zenitram did not address the matter of how they would protect workers on their respective towers from RF radiation exposure. *See* 47 C.F.R. § 1.1307(b). Consequently, we are concerned that Wolfe and Zenitram may have failed to comply with the environmental criteria set forth in the *Report and Order* in GEN Docket No. 79-163, 51 Fed. Reg. 14999 (April 12, 1986). *See also Public Notice* entitled "Further Guidance for Broadcasters Regarding Radiofrequency Radiation and the Environment" (released January 24, 1986). Under the rules, applicants must determine whether their proposals would have a significant environmental effect under the criteria set out in 47 C.F.R. § 1.1307. If the application is determined to be subject to environmental processing under the 47 C.F.R. § 1.1307 criteria, the applicant must then submit an Environmental Assessment (EA) containing the information delineated in 47 C.F.R. § 1.1311. 47 C.F.R. § 1.1307(b) states that an EA must be prepared if the proposed operation would cause exposure to workers exceeding specific standards. Since Wolfe and Zenitram failed to indicate how workers engaged in maintenance and repair on the tower would be protected from exposure to levels exceeding the ANSI guidelines, the applicants will be required to submit the environmental impact information described in 47 C.F.R. § 1.1311. *See generally* OST Bulletin No. 65, *supra*, at 28. Accordingly, Wolfe and Zenitram will be required to file, within 30 days of the release of this Order, an EA with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. *See Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980). In the event the Mass Media Bureau determines, based on its

analysis of the Environmental Assessments, that the proposal will not have a significant impact upon the quality of the human environment, the contingent environmental issue shall be deleted, and the presiding judge shall thereafter not consider the environmental effects of the respective proposals. *See* 47 C.F.R. § 1.1308(d).

7. *LRB.* LRB has not supplied the name of a contact person at the financial institution listed in its application as a funding source. We shall require that it supply the missing information to the presiding Administrative Law Judge.

8. *Comparative Coverage.* Data submitted by the applicants indicate there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

9. *Conclusion.* Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

10. ACCORDINGLY, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications (save Hahn's) ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to Wolfe or Zenitram in which it is concluded that the proposed facility is likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the Environmental Policy Act, as implemented by 47 C.F.R. §§ 1.1301-1.1319.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

11. IT IS FURTHER ORDERED, That the Hahn application IS HEREBY DISMISSED.

12. IT IS FURTHER ORDERED, That in accordance with paragraph 6 hereinabove, Wolfe and Zenitram shall submit the environmental assessments required by 47 C.F.R. § 1.1311 to the presiding Administrative Law Judge within 30 days of the release of this Order, with a copy to the Chief, Audio Services Division.

13. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, LRB shall file the amendment specified in paragraph 7 above and serve a copy of it upon the presiding Administrative Law Judge.

14. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

15. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order. Pursuant to Section 1.325(c) of the Commission's Rules, within five days after the date established for filing notices of appearance, the applicants shall serve upon the other parties that have filed notices of appearance the materials listed in: (a) the Standard Document Production Order (see Section 1.325(c)(1) of the Rules); and (b) the Standardized Integration Statement (see Section 1.325(c)(2) of the Rules), which must also be filed with the presiding officer. Failure to so serve the required materials may constitute a failure to prosecute, resulting in dismissal of the application. *See generally Proposals to Reform the Commission's Comparative Hearing Process* (Report and Order in Gen. Doc. 90-264), 6 FCC Rcd 157, 160-1, 166, 168 (1990), *Erratum*, 6 FCC Rcd 3472 (1991), *recon. granted in part*, 6 FCC Rcd 3403 (1991).

16. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-64

In re Applications of

WIND 'N SEA FM LIMITED PARTNERSHIP (hereafter "Partnership") File No. BPH-901224ME

WEBB BROADCASTING, INC. (hereafter "Webb") File No. BPH-901224MF

ARIS MARDIROSSIAN (hereafter "Mardirossian") File No. BPH-901224MI

EQUAL TIME BROADCASTING CORP. (hereafter "Broadcasting") File No. BPH-901224MK

J.H. COMMUNICATIONS (hereafter "Communications") File No. BPH-901226MB

For Construction Permit
for a New FM Station on Channel 295A
in Ocean City, Maryland

HEARING DESIGNATION ORDER

Adopted: March 23, 1992; Released: April 13, 1992

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.[1]

2. *Short Spacing.* An engineering review of the Webb, Partnership and Communications applications reveals the following:

> (1) The Partnership proposal is 8.2 kilometers (km) short-spaced to WKDN(FM), Camden, NJ; 4.2 km short-spaced to construction permit BPH-880727MC, North Cape May, NJ; 6.4 km short-spaced to WQMR(FM), Federalsburg, MD; and 2.2 km short-spaced to WAFX(FM), Suffolk, VA.
>
> (2) The Webb proposal is 7.6 km short-spaced to WKDN(FM), 3.6 km short-spaced to construction permit BPH-880727MC, 5.8 km short-spaced to WQMR(FM), and 2.7 km short-spaced to WAFX(FM).
>
> (3) The Communications proposal is 12.7 km short-spaced to WKDN(FM), 9.5 km short-spaced to construction permit BPH-880727MC, and 6.2 km short-spaced to WQMR(FM).

3. These short-spacings are in violation of 47 C.F.R. § 73.207. In this regard, Webb requested processing under 47 C.F.R. § 73.213(c)(1) with respect to all of them. Communications requested processing pursuant to 47 C.F.R. § 73.213(c)(1) with respect to WKDN(FM) and WQMR(FM).[2] Partnership failed to address this problem; however, its application meets the spacing requirements of 47 C.F.R. § 73.213(c)(1) with respect to all the stations.

4. A review of the applications reveals that the instant allotment (for Channel 295A in Ocean City, MD) is itself in violation of 47 C.F.R. § 73.207. Specifically, this allotment is 3.1 km short-spaced to WKDN(FM), 1.1 km short-spaced to construction permit BPH-880727MC, and 1.4 km short-spaced to WAFX(FM). However, the Ocean City allotment is not short-spaced to WQMR(FM). Therefore, 47 C.F.R. § 73.213(c)(1) cannot be applied to the required separation distance to WQMR(FM).

5. In clarifying its existing policy regarding short-spaced Class A allotments, the Commission recently amended Section 73.213(c) of the Rules to provide explicitly that:

> If the reference coordinates of an allotment are short-spaced to an authorized facility or another allotment (as a result of the revision of Section 73.207 in the *Second Report and Order* in MM Docket No. 88-375), an application for the allotment may be authorized, and subsequently modified after grant, in accordance with paragraph (c)(1) or (c)(2) of this Section *only with respect to such short spacing.*

Memorandum Opinion and Order, MM Docket 88-375, 6 FCC Rcd 3417, 3424-3425 (1991) (emphasis added). *See id.* at 3418 n.7.

6. We acknowledge, however, that prior to the release of that *Memorandum Opinion and Order*, the policy discussed above regarding "grandfathered" stations or allotments may have been somewhat unclear. In particular, we find that return of the applications with no opportunity to correct the defect would be inappropriate, because the applicants did not, for "hard look" processing purposes, have full and explicit notice of the prerequisites they must meet to avoid summary dismissal. *Compare Salzer v. FCC*, 778 F.2d 869, 875 (D.C. Cir. 1985) (dismissal inappropriate where rules are unreasonably ambiguous) *with Malkan FM Associates v. FCC*, 935 F.2d 1313, 1319 (D.C. Cir.

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[1] A competing application (File No. BPH-901226MA), filed by Bruce D. Blanchard Limited Partnership, was dismissed for failure to pay a required fee. An appeal of the dismissal has been filed with, and is currently pending before, the Commission's Office of Managing Director.

[2] Communications also requested processing pursuant to 47 C.F.R. § 73.215, and waiver of 47 C.F.R. § 73.207, with respect to BPH-880727MC. Because its application satisfies the requirements of 47 C.F.R. § 73.215 with respect to BPH-880727MC, Communications' request for waiver of 47 C.F.R § 73.207 is HEREBY DISMISSED as unnecessary.

1991) (dismissal affirmed where rules are clear). Instead, Partnership, Webb, and Communications will be required to file a curative amendment with the presiding Administrative Law Judge pursuant to 47 C.F.R. § 73.3522(b).[3]

7. *Environmental.* Our engineering study based upon OST Bulletin No. 65, October, 1985 entitled "Evaluating Compliance with Specific Guidelines for Human Exposure to Radiofrequency Radiation" reveals that Broadcasting, Partnership and Communications did not address the matter of how they would protect workers on their respective towers from RF radiation exposure. *See* 47 C.F.R. § 1.1307(b). Consequently, we are concerned that Broadcasting, Partnership and Communications may have failed to comply with the environmental criteria set forth in the *Report and Order* in GEN Docket No. 79-163, 51 Fed. Reg. 14999 (April 12, 1986). *See also Public Notice* entitled "Further Guidance for Broadcasters Regarding Radiofrequency Radiation and the Environment" (released January 28, 1986). Under the rules, applicants must determine whether their proposals would have a significant environmental effect under the criteria set out in 47 C.F.R. § 1.1307. If the application is determined to be subject to environmental processing under the 47 C.F.R. § 1.1307 criteria, the applicant must then submit an Environmental Assessment (EA) containing the information delineated in 47 C.F.R. § 1.1311. 47 C.F.R. § 1.1307(b) states that an EA must be prepared if the proposed operation would cause exposure to workers exceeding specific standards. Since Broadcasting, Partnership and Communications failed to indicate how workers engaged in maintenance and repair on the tower would be protected from exposure to levels exceeding the ANSI guidelines, the applicants will be required to submit the environmental impact information described in 47 C.F.R. § 1.1311. *See generally* OST Bulletin No. 65, *supra*, at 28. Accordingly, Broadcasting, Partnership and Communications will be required to file, within 30 days of the release of this Order, an EA with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. *See Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980). In the event the Mass Media Bureau determines, based on its analysis of the Environmental Assessments, that the proposal will not have a significant impact upon the quality of the human environment, the contingent environmental issue shall be deleted, and the presiding judge shall thereafter not consider the environmental effects of the respective proposals. *See* 47 C.F.R. § 1.1308(d).

8. *Petition to Deny.* On October 28, 1991, a Petition to Deny was filed against the Webb application by Robert L. Purcell, former licensee of AM Station WDMV, Pocomoke City, Maryland. In his petition, Purcell questions Webb's certification of its financial ability to build and operate the proposed station. Specifically, Purcell states that on May 29, 1987, pursuant to FCC consent, WDMV was sold to Five Star Broadcasting, Inc. ("Five Star"). The owners of Five Star, asserts Purcell, include Sidney Friedman, Franklyn Field and Anthony Guida, all of whom are principals in Webb and are listed as sources of funds for Webb. The petition alleges that Five Star, and its principals, defaulted in payments to Purcell pursuant to a promissory note given in connection with the sale, and that Purcell has filed a complaint in state court to enforce the note. On November 13, 1991, Webb filed an opposition and averred that Five Star has denied the allegations in Purcell's complaint.[4] By letter of December 6, 1991, Purcell declined to file a reply.

9. The public notice of the acceptance of Webb's application for filing was released on March 11, 1991. The last date for filing petitions to deny was April 12, 1991. The instant pleading was thus filed too late to be considered as a formal petition to deny. *See* 47 C.F.R. §§ 73.3573(g)(3), 73.3584(a). Nevertheless, we will consider it as an informal objection to grant of the Webb application. *See* 47 C.F.R. § 73.3587.

10. The matters raised by Purcell are insufficient to raise a *prima facie* question as to Webb's financial certification. In particular, Purcell has not specifically alleged that any of the named Webb principals are *individually* liable on the note and are unable to meet their funding commitments to Webb. Indeed, our review of the attachments to Purcell's petition reveals that: the promissory note was made by Five Star; Purcell's state court complaint names Five Star as defendant; and that security for the note consists of the real and personal property of WDMV and an escrow of the capital stock of Five Star. None of the individual principals-financiers of Webb are named individually as maker, guarantor, or defendant. In addition, although Purcell's petition states that principals of Five Star "repeatedly told Purcell that they simply cannot afford to make payments to him," Purcell Petition at 2, he did not identify these principals and did not support the allegation with a personal knowledge affidavit. Accordingly, we deny the Purcell petition.[5]

11. *EEO.* The Commission requires that if there are five or more fulltime station employees, the applicant must complete and file Section VI of Form 301, and supply a statement detailing hiring and promotion policies for women and each minority group whose representation in the available labor force is five percent or greater in the proposed service area. Although Webb has filed such statement, it is deficient. Page 2 of Webb's statement is missing. However, this omission does not affect the

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[3] Our engineering study has revealed that processing pursuant to 47 C.F.R § 73.215 with respect to WQMR may be a viable option for these applicants.

[4] Also on November 13, 1991, Webb filed a "Motion to Dismiss" the Purcell petition. Additionally, on November 14, 1991, Webb, Five Star, *et al.* filed a "Joint Motion for Sanctions" against Purcell and his counsel. In light of the action taken below, we need not reach these pleadings.

[5] The Commission has long held that it "has neither the authority nor the machinery to adjudicate alleged claims arising out of private contractual agreements." *Transcontinent Television Corp.*, 21 RR 945, 956 (1961). This agency is not the proper forum for the resolution of private disputes, and interested parties, should they deem it advisable, should seek redress (as Purcell has apparently done) in a local court of competent jurisdiction. *John F. Runner, Receiver*, 36 RR 2d 773, 776 (1976). While sharing some common principals, Five Star and Webb are separate entities. Nevertheless, we emphasize, Webb will be bound by the representations, financial and otherwise, made in its application.

tenderability or acceptability of of Webb's application. However, Webb will be required to file an amended EEO program with the presiding Administrative Law Judge, or an appropriate issue will be specified by the Judge.

12. *Attribution.* In response to Item 6, Section II of FCC Form 301, Webb states that Michael M. Reitman and Anthony Guida, employees of the National Broadcasting Company, and Franklyn Field, an employee of CBS, Inc., "are neither shareholders, officers nor directors" of those respective organizations (Exhibit 1). Webb shall provide the specific positions held by these individuals, who are also "non-voting" stockholders of Webb.

13. *Air Hazard Issue.* Since no determination has been received from the Federal Aviation Administration as to whether the antennas proposed by Webb and Broadcasting would constitute a hazard to air navigation, an issue with respect thereto will be included and the F.A.A. made a party to the proceeding.

14. *Late-Filed Amendments.* The applicants below have petitioned for leave to amend their applications. The accompanying amendments were filed after March 25, 1991, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the following amendments are accepted for filing:

APPLICANT	DATE(S) FILED
Webb	6/24, 12/11/91, 1/3/92
Mardirossian	6/3/91
Broadcasting	5/16/91
Communications	4/5/91.

In addition, Partnership and Mardirossian petitioned for leave to amend their applications on July 15, 1991 (supplemented July 22, 1991) and November 29, 1991, respectively, after the last day for filing amendments as of right. These amendments, dealing mostly with engineering, were accompanied by the good cause showing required by 47 C.F.R. § 73.3522(a)(2); consequently, they are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from any of the above amendments will be disallowed.

15. *Comparative Coverage.* Data submitted by the applicants indicate there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

16. *Conclusion.* Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

17. ACCORDINGLY, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to Partnership, Broadcasting and Communications in which it is concluded that the proposed facility is likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the Environmental Policy Act, as implemented by 47 C.F.R. §§ 1.1301- 1319.

2. To determine whether there is a reasonable possibility that the tower height and location proposed by Webb and Broadcasting would constitute a hazard to air navigation.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

18. IT IS FURTHER ORDERED, That Partnership, Webb and Communications shall file the amendments, specified in Paragraph 6 above, with the presiding Administrative Law Judge within 30 days of the release of this Order.

19. IT IS FURTHER ORDERED, That in accordance with paragraph 7 hereinabove, Partnership, Broadcasting and Communications shall submit the environmental assessments required by 47 C.F.R. § 1.1311 to the presiding Administrative Law Judge within 30 days of the release of this Order, with a copy to the Chief, Audio Services Division.

20. IT IS FURTHER ORDERED, That the Purcell Petition to Deny IS HEREBY DENIED.

21. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, Webb shall submit Section VI information in accordance with the requirement of Section 73.2080(c) of the Commission's Rules to the presiding Administrative Law Judge.

22. IT IS FURTHER ORDERED, That Webb shall file the amendment, specified in Paragraph 12 above, with the presiding Administrative Law Judge within 30 days of the release of this Order.

23. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

24. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Partnership (7/15 supplemented 7/22/91), Webb (6/24, 12/11/91, 1/3/92), Mardirossian (6/3, 11/29/91), Broadcasting (5/16/91) and Communications (4/5/91) ARE GRANTED and the corresponding amendments ARE ACCEPTED to the extent indicated in paragraph 14 above.

25. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on

the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

26. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order. Pursuant to Section 1.325(c) of the Commission's Rules, within five days after the date established for filing notices of appearance, the applicants shall serve upon the other parties that have filed notices of appearance the materials listed in: (a) the Standard Document Production Order (see Section 1.325(c)(1) of the Rules); and (b) the Standardized Integration Statement (see Section 1.325(c)(2) of the Rules), which must also be filed with the presiding officer. Failure to so serve the required materials may constitute a failure to prosecute, resulting in dismissal of the application. *See generally Proposals to Reform the Commission's Comparative Hearing Process* (Report and Order in Gen. Doc. 90-264), 6 FCC Rcd 157, 160-1, 166, 168 (1990), *Erratum*, 6 FCC Rcd 3472 (1991), *recon. granted in part*, 6 FCC Rcd 3403 (1991).

27. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-63

In re Applications of

NADINE P. RICHARDSON File No. BPH-901221MG
d/b/a ROCKY MOUNT
BROADCASTING
(hereafter "RMB")

ORCHON BROADCASTING File No. BPH-901221MI
COMPANY, INC.
(hereafter "Orchon")

For Construction Permit
for a New FM Station on
Channel 239A (95.7 MHz)
in Greenville, Georgia.

HEARING DESIGNATION ORDER

Adopted: March 23, 1992; Released: April 13, 1992

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.[1]

2. *Preliminary matters.* RMB, on April 10, 1991, filed a Petition to Deny against Orchon's application. According to RMB, it is impossible to determine whether Orchon's proposal adequately covers the community of license. RMB asserts that this is so, because Orchon's coverage map is smudged, making it impossible to clearly determine the community's boundaries. On April 22, 1991, Orchon filed an Opposition to RMB's Petition, noting that the original copy of its application adequately depicts the requisite boundaries. An examination by the Commission staff of that copy reveals that it does, in fact, clearly and legibly delineate the city boundary of Greenville. Thus, the map satisfies the FM "hard look" processing requirements. *See Richard Culpepper*, 5 FCC Rcd 2983 (1990).[2] Accordingly, RMB's petition will be denied below.

3. RMB submitted an amendment on November 8, 1991, addressing the issue of RF exposure to workers on its proposed tower. This amendment was filed after the designated period for filing amendments as of right. The defect which this amendment seeks to cure is classified as a "grantability" defect, and thus would require the designation of an environmental issue against RMB. The amendment has been studied by the staff and found to specify an appropriate means for protecting persons authorized to be on the RMB tower. The amendment will therefore be accepted for purposes of administrative convenience, as it eliminates the necessity for a hearing on this issue. RMB will, however, be permitted no comparative advantage as a result of this amendment.

4. *Orchon.* An engineering study base upon OST Bulletin No. 65, 1985 entitled "Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radiofrequency Radiation" reveals that Orchon did not sufficiently address the issue of potential occupational hazards caused by the proposed facility. Therefore, Orchon must submit, within thirty days of the date of this order, an amendment that explains what steps will be taken to limit RF exposure to workers authorized access to the tower site. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. *See Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980). In the event the Mass Media Bureau determines, based on its analysis of the amendment, that Orchon's proposal will not have a significant impact upon the quality of the human environment, the contingent environmental issue shall be deleted and the judge shall thereafter not consider the environmental effects of the proposal. *See* 47 C.F.R. § 1.1308(d).

5. Orchon petitioned for leave to amend its application on December 4, 1991. The accompanying amendment was filed after the last date for filing amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

6. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to Orchon in which it is concluded that the proposed facility is likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. §§ 1.1301-1319.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

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[1] An application filed by Greenville Communications, Inc. (File No. BPH-901221MH) was dismissed on August 29, 1991 for failure to pay the hearing fee.

[2] *See Amendment of Sections 73.3572 and 73.3573 Relating to Processing of FM and TV Broadcast Applications*, 50 Fed. Reg 19,936 (May 13, 1985).

3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

8. IT IS FURTHER ORDERED, That the petition to deny filed by RMB on April 10, 1991, IS DENIED.

9. IT IS FURTHER ORDERED, That, in accordance with paragraph 4 above, Orchon shall submit an amendment to the presiding Administrative Law Judge describing the steps it will take to limit RF exposure to workers authorized access to the tower site.

10. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington D.C. 20554.

11. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party, respondent herein shall, pursuant to Section 1.221 (c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order. Pursuant to Section 1.325(c) of the Commission's Rules, within five days after the date established for filing notices of appearance, the applicants shall serve upon the other parties that have filed notices of appearance the materials listed in: (a) the Standard Document Production Order (see Section 1.325(c)(1) of the Rules); and (b) the Standardized Integration Statement (see Section 1.325(c)(2) of the Rules), which must also be filed with the presiding officer. Failure to so serve the required material may constitute a failure to prosecute, resulting in dismissal of the application. *See generally Proposals to Reform the Commission's Comparative Hearing Process* (Report and Order in Gen. Doc. 90-264), 6 FCC Rcd 157, 160-1, 166, 168 (1990), *Erratum*, 6 FCC Rcd 3472 (1991), *recon. granted in part*, 6 FCC Rcd. 3403 (1991).

12. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-62

In re Applications of

CRYSTAL CLEAR COMMUNICATIONS, INC. (hereafter "CCCI") File No. BPH-901214MA

THE RADIO MINISTRIES BOARD OF VICTORY CHRISTIAN CENTER ASSEMBLY OF GOD, INC. (hereafter "VCC") File No. BPH-901217MJ

For Construction Permit
for a New FM Station on Channel 240A
in Seelyville, Indiana

HEARING DESIGNATION ORDER

Adopted: March 23, 1992; Released: April 13, 1992

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. Each of the captioned applicants propose to locate their transmitting antennas on a new tower. Our engineering study indicates that both CCCI and VCC have failed to address the matter of how they propose to resolve any RF exposure to workers on their respective towers. *See* 47 C.F.R. § 1.1307(b). Consequently, we are concerned that each may have failed to comply with the environmental criteria set forth in the *Report and Order* in GEN Docket No. 79-163, 51 Fed. Reg. 14999 (April 12, 1986). *See also, Public Notice* entitled "Further Guidance for Broadcasters Regarding Radiofrequency Radiation and the Environment" (released January 24, 1986). Under the rules, applicants must determine whether their proposals would have a significant environmental effect under the criteria set out in 47 C.F.R. § 1.1307. If the application is determined to be subject to environmental processing under the 47 C.F.R. § 1.1307 criteria, the applicant must then submit an Environmental Assessment (EA) containing the information delineated in 47 C.F.R. § 1.1311. Section 1.1307 states that an EA must be prepared if the proposed operation would cause exposure to workers or the general public to levels of RF radiation exceeding specific standards. Since CCCI and VCC failed to indicate how workers engaged in maintenance and repair would be protected from exposure to levels exceeding the ANSI guidelines, each will be required to submit the environmental impact information described in 47 C.F.R. § 1.1311. *See generally,* OST Bulletin No. 65 (October, 1985) entitled "Evaluating Compliance With FCC-Specified Guidelines For Human Exposure to Radiofrequency Radiation," at 28. Therefore, CCCI and VCC will be required to file, within 30 days of the release of this Order, an EA with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. *See Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980). In the event the Mass Media Bureau determines, based on its analysis of the Environmental Assessments, that the applicants' proposals will not have a significant impact upon the quality of the human environment, the contingent environmental issue shall be deleted and the presiding judge shall thereafter not consider the environmental effects of the proposals. *See* 47 C.F.R. § 1.1308(d).

3. VCC petitioned for leave to amend its application on January 17, 1992. The accompanying amendment was filed after March 27, 1991, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

4. Since the FAA has determined that the antenna proposed by CCCI will constitute a hazard to air navigation, and since no determination has been received from the FAA as to whether the antenna proposed by VCC would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

5. Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

6. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to CCCI and VCC in which it is concluded that the proposed facilities are likely to have an adverse effect on the quality of the environment, to determine whether the proposals are consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. §§ 1.1301-1319.

2. To determine whether there is a reasonable possibility that the tower height and location proposed by CCCI and VCC would constitute a hazard to air navigation.

3. To determine which of the proposals would, on a comparative basis, better serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

8. IT IS FURTHER ORDERED, That in accordance with paragraph 2 hereinabove, CCCI and VCC shall submit the environmental assessment required by 47 C.F.R. § 1.1311 to the presiding Administrative Law Judge within 30 days of the release of this Order, with a copy to the Chief, Audio Services Division.

9. IT IS FURTHER ORDERED, That the petition for leave to amend filed by VCC IS GRANTED, and the corresponding amendment IS ACCEPTED to the extend indicated herein.

10. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

11. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington D.C. 20554.

12. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order. Pursuan, to Section 1.325(c) of the Commission's Rules, within five days after the date established for filing notices of appearance, the applicants shall serve upon the other parties that have filed notices of appearance the materials listed in: (a) the Standard Document Production Order (see Section 1.325(c)(1) of the Rules); and (b) the Standardized Integration Statement (see Section 1.325(c)(2) of the Rules), which must also be filed with the presiding officer. Failure to so serve the required materials may constitute a failure to prosecute, resulting in dismissal of the application. *See generally, Proposals to Reform the Commission's Comparative Hearing Process* (Report and Order in Gen. Doc. 90-264), 6 FCC Rcd 157, 160-1, 166, 168 (1990), *Erratum*, 6 FCC Rcd 3472 (1991), *recon. granted in part*, 6 FCC Rcd 3403 (1991).

13. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-50

In re Applications of

GOLDEN CORNERS BROADCASTING, INC. (Hereafter "GCBI")	File No. BPH-901218MH
FISHER COMMUNICATIONS OF CLEMSON, INC. (Hereafter "Fisher")	File No. BPH-901219MB
CLEMSON BROADCASTING, INC. (Hereafter "CBI")	File No. BPH-901219MD
MATT PHILLIPS, JOEL KAY AND BEVERLY LOCKRIDGE, A PARTNERSHIP, d/b/a FM 104.9 BROADCASTING (Hereafter "FM 104")	File No. BPH-901218MD [Dismissed Herein]

For Construction Permit
for a New FM Station on
Channel 285A (104.9 MHZ)
in Clemson, South Carolina

HEARING DESIGNATION ORDER

Adopted: March 3, 1992; Released: April 13, 1992

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Preliminary Matters.* Review of FM 104's application reveals that it has failed to respond to Section VII, Item 1, certification of public notice, in accordance with the provisions of 47 C.F.R. § 73.3580. This ommission by FM 104 is considered to be a tenderability defect in accordance with the provisions of Appendix D of the *Report and Order* in MM Docket 84-750, 50 Fed. Reg. 19936 (1985). *See Taber Broadcasting Company*, 4 FCC Rcd 7892 (1989). Appendix D also states that:

> If any of the defects listed above are overlooked during the initial review and are found later in the process, the application will be returned as inadvertently accepted for tender and, if resubmitted, will not be accepted *nunc pro tunc*. Return of the application will void the application reference number inadvertently assigned and whatever rights of tender might have been associated with it.

Accordingly, the application of FM 104 will be returned as inadvertently accepted for tender.[1]

3. *GCBI.* On July 3, 1991 GCBI amended its application to specify a reduced tower height of 73 meters, and clarified that amendment on November 8, 1991. Both amendments were accompanied by the good cause showing required by 47 C.F.R. § 73.3522(a)(2), as GCBI reduced the overall height above ground of the proposed tower structure in order to satisfy FAA concerns. However, the FAA continues to maintain that the proposed site will have Electromagnetic Interference ("EMI") problems. Consequently, an air hazard issue will be added below and the FAA made a party to the proceeding. In addition, GCBI states that it will protect workers engaged in the maintenance and repair in the vicinity of the antenna by reducing or discontinuing operation. Therefore, GCBI complies with the environmental criteria set forth herein. Consequently, the amendments are accepted for filing. However, an applicant may not improve its comparative advantage after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

4. *Fisher.* Fisher proposes to locate its transmitting antenna on a new tower. Our engineering study indicates that the applicant failed to address the matter of how it proposes to resolve any RF exposure to workers on its tower. *See* 47 C.F.R. § 1.1307(b). Consequently, we are concerned that Fisher may have failed to comply with the environmental criteria set forth in the *Report and Order* in GEN Docket No. 79-163, 51 Fed. Reg. 14999 (April 12, 1986). *See also, Public Notice* entitled "Further Guidance for Broadcasters Regarding Radiofrequency Radiation and the Environment" (released January 24, 1986). Under the rules, an applicant must determine whether its proposal would have a significant environmental effect under the criteria set out in 47 C.F.R. § 1.1307. If the application is determined to be subject to environmental processing under the 47 C.F.R. § 1.1307 criteria, the applicant must then submit an Environmental Assessment (EA) containing the information delineated in 47 C.F.R. § 1.1311. Section 1.1307 states that an EA must be prepared if the proposed operation would cause exposure to workers or the general public to levels of RF radiation exceeding specific standards. Since Fisher failed to indicate how workers engaged in maintenance and repair would be protected from exposure to levels exceeding the ANSI guidelines, it will be required to submit the environmental impact information described in 47 C.F.R. § 1.1311. *See generally*, OST Bulletin No. 65 (October, 1985) entitled "Evaluating Compliance With FCC-Specified Guidelines For Human Exposure to Radiofrequency

[1] On April 10, 1991, GCBI filed a petition to deny the application of FM 104. In light of the action taken hereinabove, the petition will be dismissed as moot.

Radiation," at 28. Therefore, Fisher will be required to file, within 30 days of the release of this Order, an EA with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. *See Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980). In the event the Mass Media Bureau determines, based on its analysis of the Environmental Assessment, that the applicant's proposal will not have a significant impact upon the quality of the human environment, the contingent environmental issue shall be deleted and the presiding judge shall thereafter not consider the environmental effects of the proposal. *See* 47 C.F.R. § 1.1308(d)

5. The Commission requires that if there are five or more fulltime station employees, the applicant must complete and file Section VI of Form 301, and supply a statement detailing hiring and promotion policies for women and each minority group whose representation in the available labor force is five percent or greater in the proposed service area. Although Fisher has filed such statement, it is deficient. Fisher has not listed a minority organization. Accordingly, Fisher will be required to file an amended EEO program with the presiding Administrative Law Judge, or an appropriate issue will be specified by the Judge.

6. *CBI.* On June 4, 1991, CBI petitioned for leave to amend its application. In light of the fact that the FAA made a determination on May 13, 1991 that CBI's proposal would cause EMI problems to air navigation, CBI requests that the Commission add a condition to the authorization requiring CBI to resolve any EMI problems in the event of grant of its application, in lieu of imposing an air hazard issue in this proceeding. However, it is Commission policy to specify an air hazard issue in a hearing designation order if the FAA has determined that an applicant's proposal would constitute an electromagnetic hazard to air navigation. Therefore, CBI's petition will be denied, an air hazard will be added below and the FAA made a party to the proceeding.

7. The applicant below has petitioned for leave to amend its application on the date shown. The accompanying amendment was filed after the last date for filing amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

APPLICANTS	AMENDMENTS FILED
Fisher	June 11, 1991

8. Since the Federal Aviation Administration has determined that the antenna proposed by Fisher would constitute a hazard to air navigation, an issue with respect thereto will be included and the F.A.A. made a party to the proceeding.

9. Data submitted by the applicants indicate there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

10. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

11. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to Fisher in which it is concluded that the proposed facilities are likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. §§ 1.1301-1319.

2. To determine whether there is a reasonable possibility that the tower height and location proposed by GCBI, Fisher and CBI would constitute a hazard to air navigation.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

12. IT IS FURTHER ORDERED, That the application of FM 104 IS RETURNED AS INADVERTENTLY ACCEPTED FOR TENDER.

13. IT IS FURTHER ORDERED, That the petition to deny filed by GCBI with respect to the application of FM 104 IS DISMISSED AS MOOT.

14. IT IS FURTHER ORDERED, That, in accordance with paragraph 4 hereinabove, Fisher shall submit the environmental assessment required by 47 C.F.R. § 1.1311 to the presiding Administrative Law Judge within 30 days of the release of this Order, with a copy to the Chief, Audio Services Division.

15. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, Fisher shall submit Section VI information in accordance with the requirement of Section 73.2080(c) of the Commission's Rules to the presiding Administrative Law Judge.

16. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by GCBI and Fisher ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extend indicated herein.

17. IT IS FURTHER ORDERED, That the petition for leave to amend filed by CBI IS DENIED to the extent indicated in paragraph 6.

18. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

19. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington D.C. 20554.

20. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order. Pursuant to Section 1.325(c) of the Commission's Rules, within five days after the date established for filing notices of appearance, the applicants shall serve upon the other parties that have filed notices of appearance the materials listed in: (a) the Standard Document Production Order (see Section 1.325(c)(1) of the Rules); and (b) the Standardized Integration Statement (see Section 1.325(c)(2) of the Rules), which must also be filed with the presiding officer. Failure to so serve the required materials may constitute a failure to prosecute, resulting in dismissal of the application. *See generally Proposals to Reform the Commission's Comparative Hearing Process* (Report and Order in Gen. Doc. 90-264), 6 FCC Rcd 157, 160-1, 166, 168 (1990), *Erratum*, 6 FCC Rcd 3472 (1991), *recon. granted in part*, 6 FCC Rcd 3403 (1991).

21. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TRT/FTC INTERNATIONAL, INC. File No. I-T-C-92-071

Application for authority to acquire and operate facilities for service between the U.S. and Ecuador.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: April 1, 1992; Released: April 10, 1992

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested applications, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct service between the U.S. and Ecuador by TRT/FTC International, Inc. (TRT/FTC).

2. Accordingly, IT IS ORDERED that application File No. I-T-C-92-071 IS GRANTED, and TRT/FTC is authorized to:

a. lease from Comsat and operate six voice-grade satellite circuits between the Etam, West Virginia earth station and an appropriate INTELSAT satellite over the Atlantic Ocean, connecting with similar circuits between the satellite and an earth station in Ecuador furnished by TRT/FTC's correspondent in Ecuador;

b. lease from AT&T and operate six voice-grade circuits in the Etam earth station;

c. lease and operate six voice-grade circuits between the Etam earth station and TRT/FTC's New York office; and

d. use the said facilities to provide TRT/FTC's regularly authorized services, including switched voice service, between the U.S. and Ecuador.

3. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to ensure nondiscriminatory use of, and equitable access to, the communications satellite system.

4. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of an operating agreement between TRT/FTC and its correspondent in Ecuador, and a copy of the agreement shall be filed with the Commission within 30 days of its executions.

5. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the service authorized in this Order.

6. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

7. IT IS FURTHER ORDERED that the applicant shall file semi-annual circuit reports pursuant to Section 63.10(b) of the Commission's Rules, 47 C.F.R. Section 63.10(b).

8. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TRIAX TELECOM, INC. File No. I-T-C-92-081

Application for authority to operate as an international resale carrier.

TOUCH 1 LONG DISTANCE, INC. File No. I-T-C-92-082

Application for authority to operate as an international resale carrier.

XILA COMMUNICATIONS, INC. File No. I-T-C-92-083

Application for authority to operate as an international resale carrier.

ONE TO ONE COMMUNICATIONS, INC. d/b/a ONE-2-ONE COMMUNICATIONS File No. I-T-C-92-088

Application for authority to operate as an international resale carrier.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: April 1, 1992; Released: April 10, 1992

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested applications, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of international switched voice service to the general public on a resale basis by Triax Telecom, Inc. (TTI), Touch 1 Long Distance, Inc. (Touch 1), XILA Communications, Inc. (XILA) and One to One Communications, Inc. d/b/a One-2-One Communications (One To One).

2. Accordingly, IT IS ORDERED that applications File Nos. I-T-C-92-081, I-T-C-92-082, I-T-C-92-083 and I-T-C-92-088 ARE GRANTED; and

a. TTI is authorized to provide international switched voice service by the resale of the international switched voice service set forth in AT&T's Tariff F.C.C. No. 1, MCI's Tariff F.C.C. No. 1 and US Sprint's Tariff F.C.C. No. 1 between the U.S. and the international points listed in those tariffs;

b. Touch 1 is authorized to provide international switched voice service by the resale of the international switched voice services set forth in ACC Long Distance Corp.'s Tariff F.C.C. No. 1, Allnet's Tariff F.C.C. No. 5, AT&T's Tariff F.C.C. No. 1, ATC's Tariff F.C.C. No. 2, MCI's Tariff F.C.C. No. 1 and US Sprint's Tariff F.C.C. No. 1 between the U.S. and the international points listed in those tariffs;

c. XILA is authorized to provide international switched voice service by the resale of the international switched voice services set forth in AT&T's Tariffs F.C.C. Nos. 1 and 2, MCI's Tariff F.C.C. No. 1, US Sprint's Tariffs F.C.C. Nos. 1 and 2, TRT/FTC's Tariff F.C.C. No. 15, Cable and Wireless' Tariff F.C.C. No. 3 and Litel's Tariff F.C.C. No. 1 between the U.S. and the international points listed in those tariffs; and

d. One To One is authorized to provide international switched voice service by the resale of the international switched voice service set forth in AT&T's Tariffs F.C.C. Nos. 1 and 2, MCI's Tariff F.C.C. No. 1, US Sprint's Tariffs Nos. 1 and 2, TRT/FTC's Tariff F.C.C. No. 15, Cable and Wireless' Tariff F.C.C. No. 3, Midatlantic Telecom's Tariff F.C.C. No. 1 and Litel's Tariff F.C.C. No. 1 between the U.S. and the international points listed in those tariffs.

3. IT IS FURTHER ORDERED that the applicants shall obtain any necessary operating agreements in each of the countries to which they will provide service and shall file them with the Commission within 30 days of their execution.

4. IT IS FURTHER ORDERED that the applicants shall file tariffs pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

5. IT IS FURTHER ORDERED that the applicants shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

6. IT IS FURTHER ORDERED that nothing in this authorization should be construed to include authorization for the transmission of money in connection with the services the applicants seek authority to provide. The transmission of money is not considered to be a common carrier service. Therefore, nothing in this Order should be construed as containing authority for the transmission of money.

7. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

NORTHLAND TELEPHONE SYSTEMS, LTD. File No. I-T-C-92-093

Application for authority to operate as an international resale carrier.

CORPORATE TELEMANAGEMENT GROUP, INC. File No. I-T-C-92-096

Application for authority to operate as an international resale carrier.

ACTION TELCOM CO. File No. I-T-C-92-097

Application for authority to operate as an international resale carrier.

INTERWEST TELECOM SVCS. CORP. File No. I-T-C-92-100

Application for authority to operate as an international resale carrier.

SMJ COMMMUNICATIONS, INC. File No. I-T-C-92-104

Application for authority to operate as an international resale carrier.

ATI RENTALS, INC. File No. I-T-C-92-107

Application for authority to operate as an international resale carrier.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: April 1, 1992; Released: April 10, 1992

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested applications, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of international switched voice service to the general public by Northland Telephone Systems, Ltd. (Northland), Corporate Telemanagement Group, Inc. (CTG), Action Telcom Co. (Action), Interwest Telecom Svcs. Corp. (ITSC), SMJ Communications, Inc. (SMJ) and ATI Rentals, Inc. (ATI).

2. Accordingly, IT IS ORDERED that applications File Nos. I-T-C-92-093, I-T-C-92-096, I-T-C-92-097, I-T-C-92-100, I-T-C-92-104 and I-T-C-92-107 ARE GRANTED; and

a. Northland is authorized to provide international switched voice services by the resale of the international voice service set forth in AT&T's Tariffs F.C.C. Nos. 1, 2 and 12, MCI's Tariff F.C.C. No. 1, and US Sprint's Tariff F.C.C. Nos. 1 and 2 between the U.S. and the international points listed in those tariffs;

b. CTG is authorized to provide international switched voice service by the resale of the international switched voice service set forth in MCI's Tariff F.C.C. No. 1 and US Sprint's Tariffs F.C.C. Nos. 1 and 2 between the U.S. and international points listed in those tariffs;

c. Action is authorized to provide international switched voice service by the resale of the international switched voice service set forth in AT&T's Tariff F.C.C. No. 1, MCI's Tariff F.C.C. No. 1, and US Sprint's Tariff F.C.C. No. 1, between the U.S. and the international points listed in those tariffs;

d. ITSC and SMJ are authorized to provide international switched voice service by the resale of the international switched voice service set forth in Intellicall Operator Services, Inc.'s Tariff F.C.C. No. 1 between the U.S. and the international points listed in that tariff; and

e. ATI is authorized to provide international switched voice service by the resale of the international switched voice services set forth in AT&T's Tariffs F.C.C. Nos. 1 and 2, MCI's Tariff F.C.C. No. 1, US Sprint's Tariffs F.C.C. Nos. 1 and 2, TRT/FTC's Tariff F.C.C. No. 15, Cable and Wireless' Tariff F.C.C. No. 3 and Litel's Tariff F.C.C. No. 1 between the U.S. and international points listed in those tariffs.

3. IT IS FURTHER ORDERED that the applicants shall obtain any necessary operating agreements in each of the countries to which they will provide service and shall file them with the Commission within 30 days of their execution.

4. IT IS FURTHER ORDERED that the applicants shall file tariffs pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

5. IT IS FURTHER ORDERED that the applicants shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

6. IT IS FURTHER ORDERED that nothing in this authorization should be construed to include authorization for the transmission of money in connection with the services the applicants seek authority to provide. The transmission of money is not considered to be a common carrier service. Therefore, nothing in this Order should be construed as containing authority for the transmission of money.

7. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Application for Joint License of Aurora II Satellite — 21-DSS-AL-91

ORDER AND AUTHORIZATION

Adopted: March 30, 1992; Released: April 13, 1992

By Deputy Chief, Common Carrier Bureau:

1. Alascom, Inc. (Alascom), licensee of the Aurora II domestic fixed-satellite, has applied to modify its authorization to license the satellite jointly with GE American Communications, Inc. (GE). The application was put on public notice and no comments or oppositions have been received. We find it is in the public interest to grant this application.

2. Alascom was originally authorized to construct, launch and operate Aurora II in 1988. The satellite was launched in May 1991 and is currently operating at 139° W.L.[1]

3. Alascom is requesting authorization to hold the license for this satellite jointly with GE, another entity that holds numerous domestic fixed satellite licenses including ten space station authorizations. GE's legal, technical and financial qualifications to hold a license in the fixed-satellite service are a matter of record.[2] The application states that within the ownership structure of GE Americom, there are two non-U.S. citizen directors/officers of parent companies. Michael Carpenter, a Canadian citizen, is an executive vice-president and director of General Electric Financial Services, Inc. and General Electric Capital Corporation. Paolo Fresco, an Italian citizen, is a director of General Electric Company and senior vice-president of its international division. The presence of these individuals within the corporate structure of this licensee does not adversely affect the public interest or serve as a barrier to the grant of a joint license under Section 310(b)(4) of the Communications Act.[3]

4. Grant of a joint license for Aurora II to Alascom and GE is in the public interest. Both entities are experienced and financially well qualified space station operators. A joint license previously was granted to these same entities for the Satcom V satellite in 1982[4] and that space station was successfully operated at 143° W.L. until its retirement in 1991.

5. In granting this application for a joint license, however, we emphasize that both licensees will be individually responsible and liable for the operation of the satellite. Although the application states that GE has contracted with Alascom to provide tracking, telemetry and control of Aurora II, each will be held responsible for its operation and for complying with Commission rules. We will look to both or either of them to resolve any instances of unacceptable interference or other problems.

6. Accordingly, IT IS ORDERED that the application to jointly license the Aurora II satellite to Alascom, Inc. and GE American Communications, Inc., File No. 21-DSS-AL-91, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald P. Vaughan
Deputy Chief, Common
Carrier Bureau

[1] Alascom was granted temporary authority to test Aurora II at 136° W.L. for a brief period of time but the satellite is now operating at its assigned location of 139° W.L.

[2] GE American Communications Inc., 3 FCC Rcd 6989 (1988).

[3] *See* General Electric Company, 5 FCC Rcd 1335 (March 8, 1990).

[4] Alascom, Inc., FCC 82T-25 (released October 25, 1982). This satellite was renamed Aurora I after Alascom acquired it from RCA American Communications Inc., GE's predecessor.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICALL CORPORATION File No. I-T-C-92-015

Application for authority to operate
as an international resale carrier.

ORDER AUTHORIZATION AND CERTIFICATE

Adopted: March 30, 1992; Released: April 10, 1992

By the Chief, International Facilities Division:

1. The above-captioned application, filed by AmeriCall Corporation, (AmeriCall), requests authority pursuant to Section 214 of the Communications Act of 1934, as amended, to provide international switched voice service by the resale of international switched voice services of other international common carriers. The application was placed on public notice on October 23, 1991. A Petition to Deny was filed by AmeriCall Systems of Louisville (ACSL) on November 22, 1991. AmeriCall filed its opposition on December 2, 1991.

2. ACSL alleges that both companies operate in the same market and that AmeriCall's use of the similar name would cause it harm. In response, AmeriCall states that the Commission should not adjudicate a trademark infringement dispute. AmeriCall also states that it has been in operation in California since 1982, prior to ACSL's registration of the "AmeriCall" trademark.

3. We agree with the applicant AmeriCall, that this is not the proper forum for adjudication of a trademark infringement dispute. We also note that AmeriCall is incorporated in California and has been providing service since 1982 from points in California to points throughout the U.S., while ACSL is incorporated in Kentucky. Although ACSL states that it operates in the same market as AmeriCall, ACSL does not specifically state that it provides service originating from California. Further, the two names are not identical and the ACSL's use of the word Louisville in its corporate title may not necessarily result in confusion given the distance between the primary service areas of the two companies.

4. Upon consideration of the application and pleadings, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of international switched voice service to the general public by AmeriCall.

5. Accordingly, IT IS ORDERED that application File No. I-T-C-92-015 IS GRANTED, and AmeriCall is authorized to provide international switched voice service by the resale of the international switched voice service set forth in AT&T's Tariffs F.C.C. Nos. 1 and 2, MCI's Tariff F.C.C. No. 1 and US Sprint's Tariffs F.C.C. Nos. 1 and 2 between the U.S. and the international points listed in those tariffs.

6. IT IS FURTHER ORDERED that ACSL's petition to deny is HEREBY DENIED.

7. IT IS FURTHER ORDERED that the applicant shall obtain any necessary operating agreements in each of the countries to which it will provide service and shall file them with the Commission within 30 days of its execution.

8. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

9. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

10. IT IS FURTHER ORDERED that nothing in this authorization should be construed to include authorization for the transmission of money in connection with the services the applicant seeks authority to provide. The transmission of money is not considered to be a common carrier service. Therefore, nothing in this Order should be construed as containing authority for the transmission of money.

11. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

SEVEN SEAS COMMUNICATIONS, INC.

File No. I-T-C-92-039

Application for authority to operate as an international resale carrier

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: March 30, 1992; Released: April 10, 1992

By the Chief, International Facilities Division:

1. On November 21, 1991, Seven Seas Communications, Inc. (SSCI) filed the above-captioned application pursuant to Section 214 of the Communications Act, for authority to provide martitime mobile satellite services, including voice, data, facsimile and record communications, by reselling the services of IDB Aero-Nautical Communications, Inc. Further, SSCI proposes to offer the service to all points in the Atlantic, Pacific, and Indian Ocean regions. The application is uncontested.

2. Upon consideration of this application, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of maritime mobile satellite services to the general public by Seven Seas Communications, Inc.

3. Accordingly, IT IS ORDERED that application File No. I-T-C-92-039 IS GRANTED and SSCI is authorized to provide maritime mobile satellite service by the resale of the maritime mobile satellite service set forth in IDB Aero-Nautical's Tariff F.C.C. No. 1 between the U.S. and the Atlantic, Pacific, and Indian Ocean regions.

4. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

5. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

INTERNATIONAL TELECOMMUNICATIONS, CORP. File No. I-T-C-92-072

Application for authority to operate as an international resale carrier.

AMERICAN PUBLIC COMMUNICATIONS, INC. File No. I-T-C-92-073

Application for authority to operate as an international resale carrier.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: April 1, 1992; Released: April 10, 1992

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested applications, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of international switched voice service to the general public on a resale basis by International Telecommunications Corp. (ITC) and American Public Communications, Inc. (APC).

2. Accordingly, IT IS ORDERED that applications File Nos. I-T-C-92-072 and I-T-C-92-073 ARE GRANTED; and

a. ITC is authorized to provide international switched voice service by the resale of the international switched voice service set forth in AT&T's Tariff F.C.C. No. 1, MCI's Tariff F.C.C. No. 1 and US Sprint's Tariffs F.C.C. Nos. 1 and 2 between the U.S. and the international points listed in that tariff; and

b. APC is authorized to provide international switched voice service by the resale of the international switched voice service set forth in MCI's Tariff F.C.C. No. 1 between the U.S. and international points listed in that tariff.

3. IT IS FURTHER ORDERED that the applicants shall obtain any necessary operating agreements in each of the countries to which they will provide service and shall file them with the Commission within 30 days of their execution.

4. IT IS FURTHER ORDERED that the applicants shall file tariffs pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

5. IT IS FURTHER ORDERED that the applicants shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

6. IT IS FURTHER ORDERED that nothing in this authorization should be construed to include authorization for the transmission of money in connection with the services the applicants seek authority to provide. The transmission of money is not considered to be a common carrier service. Therefore, nothing in this Order should be construed as containing authority for the transmission of money.

7. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCI TELECOMMUNICATIONS CORP. File No. I-T-C-92-098

Application for authority to lease and operate facilities for direct service between the U.S. and Fiji.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: April 1, 1992; Released: April 10, 1992

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct service between the U.S. and Fiji by MCI Telecommunications Corporation (MCI).

2. Accordingly, IT IS ORDERED that application File No. I-T-C-92-098 IS GRANTED, and MCI is authorized to:

a. lease from Comsat and operate 16 voice-grade satellite circuits between the Yacolt, Washington earth station and an appropriate satellite over the Pacific Ocean, connecting with similar circuits between the satellite and an earth station in Fiji furnished by MCI's correspondent in Fiji;

b. own and operate 16 voice-grade circuits in the Yacolt earth station to be used in conjunction with the satellite space segment;

c. own and operate 16 voice-grade connecting circuits between the Yacolt earth station and MCI's Dominguez Hills, California, operating center; and

d. use said facilities to provide MCI's regularly authorized services, including switched voice service, between the U.S. and Fiji.

3. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to ensure nondiscriminatory use of, and equitable access to, the communications satellite system.

4. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of an operating agreement between MCI and its correspondent in Fiji, and a copy of the agreement shall be filed with the Commission within 30 days of its execution.

5. This order is issued under Section 0.291 of the Commission's rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules may be filed within 30 days of the date of public notice of this order (*See* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Permissible Services of U.S.
licensed International
Communications Satellite
Systems Separate from the
International Telecommunications
Satellite Organization (INTELSAT).

ORDER

Adopted: March 12, 1992; Released: April 8, 1992

By the Commission: **Commissioner Quello concurring and issuing a statement.**

1. *Introduction.* In 1984, the President determined, pursuant to applicable provisions of the Communications Satellite Act, as amended, that U.S.-licensed international communications satellite systems separate from the International Telecommunications Satellite Organization (INTELSAT) were "required in the national interest."[1] At the direction of the President the Secretaries of Commerce and State informed the Commission of the criteria necessary to ensure fulfillment of U.S. international obligations and furtherance of U.S. telecommunications and foreign policy interests.[2] The criteria placed certain limits on the services that separate systems might offer in order to safeguard the fiscal integrity of INTELSAT.

2. In 1985, the FCC established policies and procedures to implement the Presidential Determination.[3] Since then, two separate systems have become operational and one is authorized to begin operation in 1994.

3. *Executive Recommendations.* In 1990, Pan American Satellite (PAS) filed a petition to alter the separate satellite service limitations.[4] Both the FCC as well as the cognizant Executive agencies commenced reviews. The Executive Branch asked the FCC to withhold action pending completion of its review.[5] On November 27, 1991, then-Secretary of Commerce Robert Mosbacher and Secretary of State James Baker notified the FCC of the results of the Executive Branch's review. Under the 1984 Presidential Determination and associated FCC rulings, separate satellite systems had been limited to the sale and long-term lease of space segment capacity for services not interconnected with the public switched network (PSN). Permissible services include international private line circuits and international television (video) distribution. (Separate satellite systems are allowed to provide services interconnected with public-switched networks in two narrow instances: (a) as necessary to restore such switched services on an emergency basis; and (b) where consistent with a 100-circuit exclusion established by the Executive Branch and the FCC as a result of changes by INTELSAT in its Article XIV(d) consultation process.")[6] As a result of the 1991 Executive Branch policy review, Secretaries Mosbacher and Baker:

- o established a goal of complete elimination by January 1997 of the limitation on separate satellite systems providing circuits interconnected with public-switched networks;
- o determined that, during the interim, separate satellite systems should be allowed to provide international private line circuits (as defined by the FCC), interconnected with public-switched networks as well as their existing, permissible services; and,
- o stated that the Executive Branch would continue to review and monitor developments, and make any appropriate recommendations as the 1997 termination date approaches.

4. *Regulatory Changes Appropriate.* In view of both these Executive Branch determinations and our own independent assessment of the international satellite communications market, we believe immediate changes in the regulatory limits placed on separate satellite systems are warranted and appropriate. More than two decades of experience regulating satellite communications persuades us that expanding the permissible offerings of separate satellite systems should yield significant public interest benefits by broadening customer choice, encouraging competition and more cost-based charges, fostering innovation, and providing new job and investment opportunities.[8] The vitality of the international satellite telecommunications market dispels any concern about the need to protect more broadly INTELSAT from competition. INTELSAT views international telecommunications as a growth market in which it maintains a strong position in its core business: international video, international public switched telephony, business services and domestic and regional services.[9] This growth is further evidenced by the fact that demand for space segment capacity has resulted in the periodic unavailability of INTELSAT capacity and increasing use of non-INTELSAT capacity for international communications.[10] The United States will continue to be a substantial user of INTELSAT and will play a strong role in the continued success of the organization. We believe, in sum, that the Executive Branch policy is a reasonable measured approach to introduce the benefits of full competition in international satellite communications. This policy is in accord with over 50 comments filed in support of PanAmsat's 1990 petition to eliminate the PSN restriction as it applies to separate systems.[11]

5. *Order.* It is the policy of this Commission to facilitate competition in domestic and international communications markets to the maximum extent possible. Initiated and recommended by the Executive branch some eight years ago, the current regulatory limitations on separate satellite systems clearly warrant change. Accordingly, separate satellite systems shall be permitted to provide through the sale or lease of transponders or space segment capacity: 1) all services not interconnected with the public-switched network (including private line services and video and audio transmission services); 2) emergency restoration services; 3) up to 100 64-kilobit-per-second equivalent circuits interconnected with the public switched networks for the provision of switched international telecommunications services; and 4) interconnected private line circuits. For purposes of this *Order* we will be guided by the following definitions of "public-switched service" and "international private line service: "public-switched service" means a switched communications service fur-

nished on a common carrier basis to the general public; and "international private line service" means making dedicated international telecommunications circuits between the United States and another country available to a customer for the customer's use.[12] Customers may also combine a series of such circuits to establish international private leased telecommunications circuit networks.[13]

6. Further, in view of the goal of the Executive Branch to eliminate the PSN restriction by January 1997, we will adopt a January 1, 1997 sunset date for complete elimination of the PSN restriction. However, the operation of this sunset provision is subject to possible extension by further action of the Commission or upon a request by the Executive Branch. Should the Executive Branch submit a request at any time prior to the sunset date, we will consider extending the restrictions beyond January 1, 1997 to provide adequate time for the Executive Branch to complete a policy review or for the Commission to implement any new national interest determination resulting from such review.

7. Additionally, we hereby eliminate certain regulatory requirements imposed by the 1985 Separate Systems decision which are unnecessary as a result of the interim criteria provided in the November 1991 Baker-Mosbacher letter. The eliminated requirements are: 1) that separate systems lease space segment capacity only on a long-term basis; 2) that the PSN restriction appear in all operating agreements; 3) that private line users maintain software to block on-demand connections with the PSN; and 4) that private line users file certification statements with the Commission attesting to compliance with the PSN restriction.

ORDERING CLAUSES

8. *Authority.* This Order is issued pursuant to authority contained in Section 4 (i) and 303(r) of the Communications Act of 1934, as amended (47 U.S.C. §§154 (i), 303(r)) and Section 201(c) of the Communications Satellite Act of 1962, as amended, (47 U.S.C. 721(c)).

9. IT IS ORDERED that this Order IS ADOPTED, TO BE EFFECTIVE upon publication in the Federal Register. Notice and comment procedures are not required here[14] and the effective date provisions of the Administrative Procedure Act do not apply to this Order which relieves a restriction, 5 U.S.C. §553(d)(1), and includes definitions that are in nature of an interpretive rule, 5 U.S.C. §553 (d)(2).

10. IT IS FURTHER ORDERED that Part 25 of the Commission's Rules, 47 C.F.R. Part 25, IS AMENDED as set forth in Appendix A below, effective upon publication in the Federal Register.

11. IT IS FURTHER ORDERED that the Chief, Common Carrier Bureau shall, upon specific request of each licensee make whatever changes in authorizations issued to separate satellite systems (and associated earth stations) are necessary to implement this Order.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

Title 47 of the Code of Federal Regulations, Part 25, is amended as follows:

1. Section 25.114 is amended by revising subparagraph (c)(24) to read as follows:

§ 25.114 Applications for space station authorizations.

(c)(24) Applications for international fixed-satellite authorizations shall also provide all information necessary to comply with the policies and procedures set forth in Establishing of Satellite Systems Providing International Communications, 50 FR 42266 (October 18, 1985), 101 FCC 2d 1046 (1985), as modified by Permissible Services of U.S. Licensed International Communications Satellite Systems, Order, FCC 92-95, released April 8, 1992.

CONCURRING STATEMENT OF COMMISSIONER JAMES H. QUELLO

RE: Permissible Services of U.S. Licensed International Communications Satellite Systems Separate from the International Telecommunications Satellite Organization (INTELSAT).

This Order is a significant step in the process of allowing separate satellite systems to eventually interconnect with the public switched network. The lessened restrictions on separate satellite systems contained in this Order are scheduled to sunset in January, 1997. The Commission is adopting this significant Order without the benefit of public notice and comment. In matters of this significance, I believe the public deserves the opportunity to receive notice and provide comment. Since this opportunity was not made available to the public, I am concurring with this item.

FOOTNOTES

[1] Presidential Determination No. 85-2 of Nov. 28, 1984, 49 Federal Register 46937 (Nov. 30, 1984).

[2] Letter from George P. Shultz, Secretary of State and Malcolm Baldrige, Secretary of Commerce to Mark S. Fowler, Chairman, Federal Communications Commission (Nov. 28, 1984).

[3] See *Separate Satellites*, 101 FCC 2d 1046 (1985); *on recon*, 61 RR 649 (1986); *further recon*, 1 FCC Rcd 439 (1986).

[4] After the 1991 Executive Branch Policy review was completed, PAS withdrew its petition.

[5] Letter from Janice Obuchowski, Assistant Secretary for Communications and Information, Department of Commerce and Bradley P. Holmes, U.S. Coordinator for International Communications and Information Policy, Department of State to Alfred C. Sikes, Chairman of the Federal Communications Commission (February 6, 1991).

[6] Letter from Lawrence S. Eagleburger, Deputy Secretary of State and Thomas J. Murrin, Deputy Secretary of Commerce, to Alfred C. Sikes, Chairman, Federal Communications Commission (December 14, 1990).

[7] The 100 circuit exclusion was implemented after a 1990 Executive Branch determination that interconnection of up to 100 circuits to the public switched network over a separate system was in the national interest. The Executive Branch's

determination was based on the international obligations of the United States and its telecommunications and foreign policy interests. Section 553 (a)(1) of the Administrative Procedure Act (APA) exempts from its notice and comment rulemaking requirements matters involving a military or foreign affairs function of the United States.

[8] See generally Meredith & Schroeder, Privately Owned Commercial Telecommunications Satellites: Licensing and Regulation by the Federal Communications Commission, 27 Cal. Western L. Rev. 107 (1991).

[9] 1990-1991 INTELSAT Annual Report, at p. 6.

[10] *U.S. Industrial Outlook* '92, U.S. Department of Commerce at p. 28-9, Communications Satellite Corporation, 5 FCC Rcd 5952 (October 18, 1990).

[11] See paragraph 3 and footnote 4 *supra*. Comsat, the only party to file an opposition to PAS's petition, was concerned that the Executive Branch had not made a determination that elimination of the PSN interconnection, as proposed by PAS, would be in the national interest. That concern has been satisfied in light of the Executive Branch's modified criteria.

[12] To the extent that facilities are used to distribute video programming, we expect that steps will be taken to ensure that U.S. copyright interests are adequately protected. *See e.g., Southern Satellite Systems, Inc.*, et al., 6 FCC Rcd 3542 (CCB 1991).

[13] Although the Baker-Mosbacher letter references 47 C.F.R. 43.61 (a)(6) to define international private line service, that particular rule has been rewritten by Commission Order and all definitions have been eliminated. (*See* Report and Order in CC Docket No. 91-22, FCC 91-424, released February 12, 1992.) We will therefore rely on the definitions contained herein to provide guidance to the Commission since they are consistent with generally accepted definitions of international private line service used within the industry. (*See* CCITT, Study Group III - Report R 14, December 1990 at p. 120.)

[14] The changes advocated in the Baker-Mosbacher letter are predicated, *inter alia*, on "the international obligations of the United States, and relevant aspects of U.S. policies regarding foreign relations, [and]... national security." *See* 5 U.S.C. §553 (a)(1). Further, the Baker-Mosbacher letter attaches importance to implementation of the modified criteria "as an immediate measure." Therefore, we find that a notice and comment rulemaking would be "impracticable, unnecessary and contrary to the public interest", and there is good cause to proceed in this manner. See 5 U.S.C. 553(b)(B). Further, since the definitions in paragraph 5 above are in the nature of an interpretative rule, a notice and comment rulemaking is not required. See 5 U.S.C. §553 (b)(A).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-68

In the Matter of

Amendment of Section 73.202(b), RM-7949
Table of Allotments,
FM Broadcast Stations.
(Goldendale, Washington)

NOTICE OF PROPOSED RULE MAKING

Adopted: March 26, 1992; Released: April 13, 1992

Comment Date: June 4, 1992
Reply Comment Date: June 19, 1992

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Colin B. Malcolm ("petitioner"), permittee of Station KYYT(FM), Goldendale, Washington, proposing the substitution of Channel 272C3 for Channel 272A at Goldendale and the modification of its construction permit for Station KYYT(FM) to operate on the higher powered channel. Petitioner states his intention to apply for the channel, if allotted.

2. We believe the public interest would be served by proposing the substitution of Channel 272C3 for Channel 272A at Goldendale, Washington, since it would provide the community with a wide coverage area FM service. Channel 272C3 can be allotted to Goldendale in compliance with the Commission's minimum distance separation requirements at the petitioner's requested site with the imposition of a site restriction of 17.8 kilometers (11 miles) south.[1] As requested, we also propose to modify petitioner's construction permit for Station KYYT(FM) to specify operation on Channel 272C3 at Goldendale. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 272C3 at Goldendale or require petitioner to demonstrate the availability of an additional equivalent class channel.

3. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Goldendale, Washington	272A	272C3

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **June 4, 1992,** and reply comments on or before **June 19, 1992,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Colin B. Malcolm
P.O. Box 149
Goldendale, Washington 98620
(Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

[1] The coordinates for Channel 272C3 at Goldendale are North Latitude 45-40-15 and West Longitude 120-54-30.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-595

In the Matter of

Amendment of Section 73.202(b),	RM-7042
Table of Allotments,	RM-7094
FM Broadcast Stations.	
(Clarinda, Iowa, Maryville,	
Missouri, Omaha, Plattsmouth	
and Fairbury, Nebraska)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: March 27, 1992; Released: April 13, 1992

By the Acting Chief, Allocations Branch:

1. At the request of Nodaway Broadcasting Corporation ("Nodaway") and Vantage Communications, Inc. ("Vantage") (formerly Diane N. Landen),[1] the Commission has before it the *Notice of Proposed Rule Making and Orders to Show Cause*, 5 FCC Rcd 1 (1990). At the request of Nodaway, licensee of Station KNIM-FM, Channel 257A, Maryville, Missouri, the Commission proposed the substitution of Channel 246C3 for Channel 257A at Maryville and the modification of the station's license to specify operation on the higher class channel. At the request of Vantage, licensee of Station KKCD, Channel 290A, Omaha, Nebraska, the *Notice* proposed the substitution of Channel 290C2 for Channel 290A at Omaha and the modification of the station's then-outstanding construction permit to specify operation on the higher powered channel. To accommodate the allotment of Channel 290C2 at Omaha, the *Notice* also proposed the following substitutions: (1) Channel 295A for unoccupied but applied for Channel 293A at Plattsmouth, Nebraska; (2) Channel 257C2 for Channel 291C2 at Clarinda, Iowa, and the modification of Station KKBZ's license accordingly; and (3) Channel 258C1 for Channel 257C1 at Fairbury, Nebraska, and the modification of Station KUTT's license accordingly. *Orders to Show Cause* were issued to KKBZ, licensee of Station KKBZ, Clarinda, Iowa, and to Siebert Communications, Inc. ("Siebert"), licensee of Station KUTT, Fairbury, Nebraska. Comments were filed by Platte Broadcasting Company, Inc. ("Platte"), Vantage, Siebert, and Nodaway.[2] Reply comments were filed by Vantage.[3]

2. Vantage reiterates its intention to apply for Channel 290C2, if allotted to Omaha, and to reimburse the licensees of Stations KKBZ and KUTT for the reasonable costs associated with the substitution of their operating channels.[4] Siebert, who must specify a new transmitter site from that set forth in its application for Channel 257C1 at Fairbury, states that it has submitted an application specifying a transmitter site which conforms to Vantage's proposed rule making. However, because it is concerned about obtaining Federal Aviation Administration ("FAA") approval, Siebert requests that the channel substitutions not be made until such time as the FAA approves the application. In subsequent comments, Siebert states that such approval has been received. Therefore, Siebert is deemed to consent to the modification of Station KUTT's license to specify operation on Channel 258C1. No comments were filed by KMA Broadcasting, L.P., licensee of Station KKBZ, Channel 291C2, Clarinda, Iowa. Therefore, KMA Broadcasting is deemed to consent to the modification of Station KKBZ's license to specify Channel 257C2 in lieu of its present allotment. Nodaway filed comments stating its intention to apply for Channel 246C3, if allotted to Maryville.[5]

3. Platte, permittee of Station KOTD-FM, opposes the substitution of Channel 295A for Channel 293A.[6] It points out that Plattsmouth receives local aural transmission service only from co-owned daytime-only AM Station KOTD and thus Channel 293A represents the community's first local aural nighttime service. Platte contends that Channel 295A is technically inferior because, unlike Channel 293A, it does not readily permit operation with the maximum Class A power of 6 kW. Further, the limited available transmitter site area for a 3 kW Channel 295A station is located principally in the Missouri River Valley, with a ground elevation of only 290 meters above mean sea level, as opposed to the transmitter site specified in

[1] Vantage Communications is the successor in interest to Diane N. Landen, then permittee of Station KKCD (formerly KKVU), Channel 290A, Omaha, Nebraska, and petitioner herein. Following the consummation of the assignment of Station KKCD's construction permit, Vantage filed comments stating that Landen is the sole stockholder, officer and director of Vantage and that it reaffirms Landen's comments and commitment to reimburse the affected stations. The comments filed by Landen will be attributed to Vantage.

[2] Sunrise Broadcasting Corporation ("Sunrise") filed a counterproposal requesting the substitution of Channel 295C3 for Channel 292A at Blair, Nebraska, and the modification of Station KBWH(FM)'s license to specify operation on the higher class channel. However, Sunrise subsequently withdrew its counterproposal. Therefore, Sunrise's proposal, as well as responsive comments, need not be discussed and the proposal will be dismissed.

[3] After the record closed, Siebert filed further comments withdrawing the concerns expressed in its initial comments. In addition, Platte submitted late-filed further comments, which Vantage opposed, concerning the issue of site availability for Channel 295A at Plattsmouth. The Commission's Rules do not contemplate the acceptance of pleadings filed beyond the comment and reply comment periods. However, in this case, we believe the public interest would be served by considering all of the untimely filed comments since they facilitate resolution of the proceeding.

[4] Reimbursement to Platte is not required since no authorization for Channel 293A at Plattsmouth had been granted at the time that Vantage's petition was filed. The subsequent grant to Platte was conditioned on the outcome of this proceeding.

[5] Because a non-adjacent channel upgrade was proposed for Station KUTT, the *Notice* also proposed the allotment of Channel 291C3 to Maryville to accommodate competing expressions of interest in the Maryville channel. Since no additional competing interest was expressed, we need not allot Channel 291C3.

[6] Platte's application for a construction permit on Channel 293A was granted on December 18, 1990.

Platte's construction permit which contemplates a transmitter in an area which averages 335 meters above mean sea level. Thus, in order to achieve an antenna height of 100 meters above average terrain, a Channel 295A tower requires a height of 126 meters above ground as contrasted with only 71 meters above ground for Channel 293A. Further, Platte argues that the selection of a transmitter site is further hampered by the proximity of Offutt Air Force Base. Platte believes it doubtful that the Federal Aviation Administration would approve a tower of sufficient height because of the Air Force base. Therefore, Platte questions whether Channel 295A represents a usable allotment. In its supplemental comments, Platte submits an article from the January 14, 1992, *Omaha World Herald* stating that as a result of a grant from the State of Iowa, the Mills County Conservation Board has purchased a 306 acre parcel of land to be used for public hiking and horseback trail riding. Platte states that the potential Channel 295A Plattsmouth transmitter sites identified by Vantage are in the vicinity of the park. Therefore, it concludes that the existence of the park eliminates use of the antenna sites identified by Vantage because of the potential "environmental impact" on the park.

4. Vantage disputes the allegation of Platte. It states that there are numerous sites available for use by Platte and specifically identifies four sites located on a bluff on the east side of the Missouri River, northeast of Plattsmouth. Each site would permit a 70 dBu signal to be placed over all of Plattsmouth. Further, because of the elevation of these sites, Vantage submits that the tallest tower required by Station KOTD-FM would be 41.15 meters (135 feet), considerably less than the 75 meter tower proposed by Platte at its transmitter site for Channel 293A. As to the concerns raised by the proximity of Offutt Air Force Base, Vantage appends an affidavit from an airspace specialist stating that no FAA notification is required for any of the four sites identified by Vantage because the tower heights are less than 200 feet above ground level and more than 20,000 feet from the nearest airport runway. Therefore, Vantage urges that Platte's claims regarding the alleged deficiencies of Channel 295A be rejected. Vantage also contends that the late-filed Platte pleading is without substantive merit. It provides an engineering statement showing that the four potential transmitter sites identified in its original comments are outside of the park and that Platte has not made any showing that the construction of a less than 45.7 meter (150 foot) tower at any of the sites would have any impact, environmental or otherwise, on the proposed park.

DISCUSSION

5. We have carefully reviewed the pleadings before us and find that the public interest would be served by granting the Vantage proposal. The substitution of Channel 246C3 for Channel 257A at Maryville, Missouri, could provide the community with a wide coverage area FM transmission service, and the substitution of Channel 290C2 for Channel 290A at Omaha, Nebraska, could provide that community with an additional wide coverage area FM transmission service. While Platte argues against the substitution of Channel 295A for Channel 293A at Plattsmouth, Nebraska, we find its allegations regarding the channel's infirmities to be unpersuasive. It argues that Channel 295A is not "readily" usable as a 6 kW Class A frequency.[7] However, Vantage's proposal was filed prior to October 2, 1989, and thus was only required to provide a substitute channel capable of allotment using the mileage separations and power limitations then in effect.[8] Platte's application, and subsequent construction permit, for Station KOTD on Channel 293A specifies a maximum power of 3 kW at 100 meters height above average terrain. Platte has not demonstrated that Channel 295A cannot be used with the same facilities at the transmitter sites identified by the Commission's staff or by Vantage. Rather, it merely states that no site is available because of the existence of the new park in Mills County. We find that the allegations raised by Platte are speculative. Platte does not dispute the showing that the sites identified either by the Commission's staff or by Vantage are outside the new park. Further, Platte provides no showing demonstrating the "environmental impact" which the proposed antenna would have on the park beyond the bald statement that such impact renders the proposed sites unusable. Finally, Platte also claims that the selection of a new transmitter site would be hampered by the proximity of the Offutt Air Force Base. However, it does not dispute the statement of Vantage's air space consultant that the FAA should find acceptable the four sites proposed by Vantage. A subsequent Commission staff engineering analysis confirms Platte's claim that the site specified in the *Notice* is located in the valley and thus may require an antenna height greater than that proposed in Station KOTD-FM's construction permit or at any of the sites proposed by Vantage. Therefore, we will modify the reference coordinates for Channel 295A to specify one of the sites identified by Vantage which are located on higher ground and thus requires an antenna of less actual height.

6. As is well-established Commission policy, rule making proposals seeking changes to the FM Table of Allotments that would provide new service benefits are generally preferred over applications since the application represents only a preference for a particular transmitter site. *See Andalusia, Alabama*, 49 FR 32201, August 13, 1984, and *Topsail Beach and Wilmington, North Carolina*, 3 FCC Rcd 159 (1988). *Cf. Las Vegas Nevada*, 51 FR 9453, March 19, 1986 (application for Channel 298C at Pahrump, Nevada, prevailed over ninth allotment at Las Vegas, Nevada, because proposed Pahrump site would provide first and second fulltime aural service). In this case, Platte has not shown that use of the site specified in its construction permit will provide any such first or second fulltime aural service. Station KOTD-FM will, of course, provide Plattsmouth with its first local nighttime transmission service. However, Platte has failed to demonstrate that Station KOTD-FM cannot provide such service on Channel 295A either from the reference coordinates proposed by the Commission or from any of the transmitter sites identified by Vantage. Therefore, we

[7] According to a staff engineering study, 6 kW operation by Station KOTD-FM from the site specified in its construction permit also is not "readily" usable because it would result in a short-spacing to Station KBWH, Channel 292A, Blair, Nebraska.

[8] *See, e.g., Belvidere, New Jersey, et al.*, 6 FCC Rcd 1333 (1991).

believe that the public interest is served by substituting Channel 295A for Channel 293A at Plattsmouth, since it enables the allotment of Channel 290C2 to Omaha, and thus the expansion of service by Station KKCD, as well as the provision of a first wide coverage area FM transmission service at Maryville, Missouri.

7. Channel 290C2 can be allotted to Omaha, Nebraska, with a site restriction of 24.8 kilometers (15.4 miles) southeast to accommodate petitioner's desired transmitter site. Channel 246C3 can be allotted to Maryville, Missouri, in compliance with the Commission's minimum distance separation requirements, at Station KNIM-FM's present transmitter site. Channel 258C1 can be allotted to Fairbury, Nebraska, with a site restriction of 15.9 kilometers (9.9 miles) northeast to avoid a short-spacing to Station KHAZ, Channel 258C1, Hays, Kansas, and to avoid a conflict with the allotment of Channel 257C2 at Clarinda, Iowa. Channel 295A can be allotted to Plattsmouth, Nebraska, with a site restriction of 11.0 kilometers (6.8 miles) north. Channel 257C2 can be allotted to Clarinda, Iowa, at Station KKBZ's present transmitter site.[9] As proposed, we will also modify the construction permit of Station KOTD-FM, Plattsmouth, Nebraska, and the licenses of Stations KNIM-FM, Maryville, Missouri, KKBZ at Clarinda, Iowa, KUTT, Fairbury, Nebraska, and KKCD at Omaha, Nebraska, as discussed above.

8. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **May 28, 1992,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

City	Channel No.
Clarinda, Iowa	257C2
Maryville, Missouri	246C3
Fairbury, Nebraska	258C1
Omaha, Nebraska	222C, 231C, 241C, 260C, 264C, 283C, 290C2
Plattsmouth, Nebraska	295A

9. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Nodaway Broadcasting Corporation for Station KNIM-FM, Maryville, Missouri, IS MODIFIED to specify operation on Channel 246C3, in lieu of Channel 257A and the license of Vantage Communications, Inc., for Station KKCD, Omaha, Nebraska, IS MODIFIED to specify operation on Channel 290C2 in lieu of Channel 290A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order,* the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

10. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Siebert Communications, Inc., for Station KUTT, Fairbury, Nebraska, IS MODIFIED to specify operation on Channel 258C1 in lieu of Channel 257C1; the license of KMA Broadcasting, L.P., for Station KKBZ, Clarinda, Iowa, IS MODIFIED to specify operation on Channel 257C2 in lieu of Channel 291C2; and the construction permit of Platte Broadcasting Company, Inc., for Station KOTD-FM, Plattsmouth, Nebraska, IS MODIFIED to specify operation on Channel 295A in lieu of Channel 293A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Station KUTT's license, BLH-841025CP; Station KKBZ's license, BLH-891002KD; or Station KOTD-FM's construction permit, BPH-880714NY, except the channels as specified above. Any other changes, except those so specified under Section 73.1620 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with license BLH-841025CP, BLH-891002KD and BPH-880714NY, except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

11. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this *Report and Order* by Certified Mail, Return Receipt Requested, to the affected permittee and licensees, as follows: KMA Broadcasting, L.P., Station KKBZ, 209 N. Elm Street, Shenandoah, Iowa 51601; Siebert Communications, Inc., Station KUTT, 414 Fourth, Fairbury, Nebraska 68352; and Platte Broadcasting Company, Inc., 625 First Avenue, Plattsmouth, Nebraska 68048.

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[9] The coordinates for Channel 290C2 at Omaha, Nebraska, are North Latitude 41-08-39 and West Longitude 95-46-38. The coordinates for Channel 258C1 at Fairbury, Nebraska, are 40-14-41 and 97-03-16. The coordinates for Channel 295A at Plattsmouth, Nebraska, are 41-05-16 and 95-48-19. The coordinates for Channel 257C2 at Clarinda, Iowa, are 40-33-12 and 95-07-18. The coordinates for Channel 246C3 at Maryville, Missouri, are 40-19-41 and 94-52-31.

Because the petition which resulted in these allotments was filed prior to October 2, 1989, Platte may avail itself of the provisions of Section 73.213(c)(1) with respect to Station KJJC, Channel 295C2, Osceola, Iowa.

12. IT IS FURTHER ORDERED, That the counterproposal of Sunrise Broadcasting Corporation IS DISMISSED.

13. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

14. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-73

In the Matter of

Amendment of Section 73.202(b), RM-7954
Table of Allotments,
FM Broadcast Stations.
(Warrenton, Georgia)

NOTICE OF PROPOSED RULE MAKING

Adopted: March 30, 1992; Released: April 13, 1992

Comment Date: June 4, 1992
Reply Comment Date: June 19, 1992

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed on behalf of William P. Eaton ("petitioner"), requesting the allotment of Channel 232A to Warrenton, Georgia, as that community's second local FM transmission service. Petitioner states that it will apply for the channel if allotted.[1]

2. We believe the public interest would be served by the allotment of a second FM transmission service to Warrenton, Georgia. However, a Commission engineering analysis indicates that the allotment of Channel 232A to Warrenton would be short spaced to Channel 232A at Gibson, Georgia, as allotted in *Memorandum Opinion and Order* (MM Docket No. 89-404) 7 FCC Rcd _____ (adopted March 30, 1992). Further analysis indicates that Channel 254A is available for allotment at Warrenton, in lieu of Channel 232A. Channel 254A can be allotted to Warrenton in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.2 kilometers (6.3 miles) northeast.[2]

3. The Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Warrenton, Georgia	226C3	226C3, 254A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **June 4, 1992,** and reply comments on or before **June 19, 1992,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

John E. Fiorini, III
Mark Van Bergh
Gardner, Carton & Douglas
1001 Pennsylvania Avenue, N.W.
Suite 750
Washington, DC 20004
(Attorneys for petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments. Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules,* 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Elizabeth Beaty, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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[1] Petitioner's request was originally returned by letter as short spaced to a counterproposal in MM Docket No. 89-404. *See* Letter to John E. Fiorini, III (counsel to William P. Eaton), form Karl A. Kensinger, Chief, Allocations Branch, dated February 7, 1990. Petitioner filed a petition for reconsideration of the action requesting reinstatement of its petition. The availability of an alternate channel for Warrenton obviates the necessity to resolve the reconsideration on its merits. We will dismiss petitioner's petition for reconsideration as moot at the termination of this proceeding.

[2] The coordinates for Channel 254A at Warrenton are North Latitude 33-28-33 and West Longitude 82-35-24.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington D. C. 20554

MM Docket No. 92-74

In the Matter of

Amendment of Section 73.202(b), RM-7952
Table of Allotments,
FM Broadcast Stations.
(Byrdstown, Tennessee)

NOTICE OF PROPOSED RULE MAKING

Adopted: March 30, 1992; Released: April 13, 1992

Comment Date: June 4, 1992
Reply Comment Date: June 19, 1992

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Donald Poore ("petitioner") requesting the allotment of Channel 244A to Byrdstown, Tennessee,[3] as the community's first local FM service. Petitioner states that he will apply for the channel, if allotted.

2. We believe the public interest would be served by proposing the allotment of Channel 244A to Byrdstown, Tennessee, since it could provide the community with its first local aural transmission service. Channel 244A can be allotted to Byrdstown in compliance with the Commission's minimum distance separation requirements with a site restriction 8.1 kilometers (5.0 miles) northeast to avoid a short-spacing to Station WDOD-FM, Channel 243C, Chattanooga, Tennessee.[4]

3. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Byrdstown, Tennessee	--	244A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **June 4, 1992,** and reply comments on or before **June 19, 1992,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Donald Poore
Route 4, Box 781
Albany, Kentucky
(Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Pamela Blumenthal, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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[3] According to the 1990 U.S. Census, Byrdstown has a population of 998 persons.

[4] The coordinates for Channel 244A at Byrdstown are North Latitude 36-38-10 and West Longitude 85-05-22. Petitioner proposed coordinates North Latitude 36-38-18 and West Longitude 85-04-53, with a site restriction 8.7 kilometers (5.4 miles) northeast. However, the Commission generally does not protect a prospective applicant's desired transmitter site for a new allotment if a less restrictive site is available, as there is no guarantee that the petitioner will ultimately become the licensee. Therefore, we will not consider petitioner's site, and advance a less restrictive site for the allotment of Channel 244A at Byrdstown, Tennessee.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-404

In the Matter of

Amendment of Section 73.202(b),	RM-6895
Table of Allotments,	RM-7133
FM Broadcast Stations.	
(Greenwood, South Carolina and	
Gibson, Georgia)	

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: March 30, 1992; Released: April 13, 1992

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission is a Petition for Reconsideration of the *Report and Order* in this proceeding, 5 FCC Rcd 7022 (1990), filed by Bay Communications, Inc. ("Bay"), licensee of Station WAAW, Channel 234A, Williston, South Carolina.[1] The *Report and Order* substituted Channel 278C3 for Channel 278A at Greenwood, South Carolina and modified the license of Station WMTY-FM to specify operation on the higher powered channel, as requested by United Community Enterprises, Inc. ("United"). The *Report and Order* also allotted Channel 234A to Gibson, Georgia, at the request of Heart of Dixie Broadcasting, Inc. ("Heart of Dixie"), as that community's first local FM transmission service. United filed a Motion for Extension of Time in which to file an Opposition, and subsequently filed an Opposition to the Petition for Reconsideration. Bay filed a Reply to the Opposition, as well as an Erratum to the Reply.

2. *Background.* United initiated this proceeding by requesting a substitution of Channel 278C3 for Channel 278A and modification of its license for Station WMTY-FM to specify operation on the higher powered channel. During the initial comment period of the *Notice of Proposed Rule Making*, a mutually exclusive petition for rule making was filed on behalf of Heart of Dixie, requesting the allotment of Channel 278A to Gibson, Georgia, as that community's first local FM transmission service. That petition was treated as a counterproposal.

3. The *Report and Order* granted the upgrade of Channel 278A to 278C3 at Greenwood. A Commission engineering analysis determined that Channel 234A could be allotted to Gibson, thereby removing the need to comparatively consider the two proposals. The *Report and Order* noted that the allotment of Channel 234A to Gibson would be short spaced to Bay's pending application for Station WAAW, Channel 234A, Williston, South Carolina, to increase power from 3kW to 6kW.[2] The *Report and Order* stated that an applied for but unauthorized transmitter site generally reflects a preference for a particular site and is usually not favored over the provision of new service, citing *Andalusia, Alabama*, 49 Fed. Reg. 32201, August 13, 1984 and cases cited therein, as well as *Springdale, Arkansas*, 4 FCC Rcd 674, 677 n. 14 (1989). The *Report and Order* went on to say that Bay would be required to amend its application to specify a non-conflicting transmitter site.

4. *Petition for Reconsideration.* Bay requests denial of the upgrade of Channel 278C3 to Greenwood and the allotment of Channel 278A, and not Channel 234A, to Gibson. First, Bay claims that the Commission failed to give any public notice of its intent to use Channel 234A at Gibson, and therefore must remove the allotment of that specific channel.[3] Bay claims that it could not participate in the proceeding because it had no notice that its application site was at risk. Bay continues by arguing that even though Gibson is deserving of an allotment under the FM priorities,[4] there is a greater public interest benefit in allotting Channel 278A to Gibson, denying the upgrade of Station WMTY-FM and permitting Station WAAW to increase power on Channel 234A. Bay states that the Commission was wrong to allot Channel 234A to Gibson without first notifying Bay and considering fully its application. Bay also contends that the site specified in its application is not merely a "preferred site", but is in fact the only site available from which it can increase the power of Station WAAW from 3 kW to 6 kW. Bay argues that the Commission's general policy concerning site preference, as discussed in *Andalusia*, is inapplicable where the site chosen by the applicant is alleged to be the only available site, not a mere preference.

5. *Discussion.* We will deny Bay's petition for reconsideration. Bay contends that the Commission failed to give public notice of the use of Channel 234A in lieu of Channel 278A at Gibson, Georgia, thereby precluding Bay from participating fully in this proceeding. However, paragraph 3(c) of the *Notice of Proposed Rule Making* advised that the filing of a counterproposal may result in the allotment of an alternate channel. Additionally, the Commission may allot an alternate channel on its own motion when it determines such alternate to be the most efficient use of the spectrum. *See, e.g., Vacaville and Middletown, California*, 4 FCC Rcd 8315 (1989), *Selma*

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[1] Public notice of the filing of Bay's petition was given on January 15, 1991, Report No. 1834.

[2] Bay's application (BMPH-891002IK) was filed pursuant to *Amendment of Part 73 of the Rules to Provide for an Additional FM Station Class (C3) and to Increase the Maximum Transmitting Power for Class A FM Stations*, 4 FCC Rcd 6375 (1989).

[3] Bay also argues that Channel 234A should be allotted instead to Warrenton, Georgia, as originally proposed by William P. Eaton in a counterproposal to this proceeding. Eaton's counterproposal, returned by staff letter as untimely and unacceptable for filing, never became a part of this docketed proceeding. *See* Letter to John E. Fiorini, III (counsel to William P. Eaton), from Karl A. Kensinger, Chief, Allocations Branch, dated February 7, 1990. That counterproposal is now the subject of a petition for reconsideration that will be resolved in a separate proceeding. No action in this proceeding is intended to prejudice the resolution of Eaton's petition for reconsideration.

[4] *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). The FM priorities are 1) first full-time aural service; 2) second full-time aural service; 3) first local service; and 4) other public interest matters. Co-equal weight is given to priorities 2 and 3.

and Georgianna, Alabama, 4 FCC Rcd 7584 (1989). The Commission is not required to issue separate notices for each channel under consideration in a rule making proceeding.[5]

6. Bay's arguments regarding its application site also provide no basis for reconsideration. Absent a showing of overwhelming public interest benefit, new service is preferred over an applicant's proposed site.[6] No such showing has been made here. It is true that when such a conflict is timely presented during a rule making proceeding, we will attempt to accommodate applicants, if possible.[7] We note, however, that at no time before the filing of its petition for reconsideration did Bay attempt to participate in the rule making proceeding or to protect its rights during the proceeding, even though it had constructive notice more than five months before the *Report and Order* in this proceeding was adopted.[8]

7. A further Commission engineering analysis indicates that an alternate channel is available for use at Gibson, which would permit Bay to proceed with its application to increase power. Therefore, we will substitute Channel 232A for Channel 234A at Gibson. There are no applications on file for Gibson, and this substitution will not prejudice any party or interfere with any pending applications. Channel 232A can be substituted for Channel 234A at Gibson, Georgia in compliance with the Commission's minimum distance separation requirements, with a site restriction 4.2 kilometers (2.6 miles) north.[9]

8. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **May 28, 1992,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the community listed below, as follows:

City	Channel No.
Gibson, Georgia	232A

9. IT IS FURTHER ORDERED, That the Petition for Reconsideration filed by Bay Communications, Inc. IS DENIED.

10. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send a copy of this *Memorandum Opinion and Order* by Certified Mail, Return Receipt Requested, to Columbia County Broadcasters, P.O. Box 11594, Martinez, Georgia 30907 (licensee of Station WMTZ, Channel 232A, Martinez, Georgia).

11. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

12. For further information concerning this proceeding, contact Elizabeth Beaty, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

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[5] *See Pinewood, South Carolina*, 5 FCC Rcd 7609 (1990).

[6] *See e.g., Stuart and Boone, Iowa*, 5 FCC Rcd 4537 (1990), *recon. denied*, 6 FCC Rcd 6036 (1991), *Cookeville, et al., Tennessee*, 5 FCC Rcd 677 (1990), *Springdale, Arkansas*, 4 FCC Rcd 674 (1989).

[7] *See, e.g., Evans and Martinez, Georgia*, 4 FCC Rcd 7926 (1989), *Grover City, California*, 5 FCC Rcd 1346 (1990), *Greenville, Texas*, 6 FCC Rcd 6048 (1991).

[8] Bay states that it filed comments in May, 1990, regarding this proposed use of alternate Channel 234A at Gibson, Georgia, in response to the petition for reconsideration filed by Eaton for Warrenton, Georgia. Bay failed, however, to present any evidence that was unavailable prior to the adoption of the *Report and Order* in this, the Greenwood proceeding. Bay was free to request leave to file late comments to the *Notice of Proposed Rule Making* provided it could not have timely participated during the established comment period.

[9] The coordinates for Channel 232A at Gibson, Georgia are North Latitude 33-16-06 and West Longitude 82-36-34. While this allotment is currently short-spaced to Station WMTZ, Channel 232A, Martinez, Georgia, that station was ordered to move to Channel 230C3 in MM Docket 88-51. A construction permit has been granted to Station WMTZ on the modified channel (BPH-900611IB). Final action on applications for Channel 232A, Gibson, may be withheld until Station WMTZ is licensed to operate on Channel 230C3. We will serve Station WMTZ with a copy of this *Memorandum Opinion and Order*.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-429

In the Matter of

Amendment of Section 73.202(b),	RM-6874
Table of Allotments,	RM-7206
FM Broadcast Stations,	RM-7256
(Wellington, Wichita,	
and Andover, Kansas)	

ERRATUM

Released: April 13, 1992

1. The *Report and Order* in this proceeding, 7 FCC Rcd 2195 (DA 92-349, released March 31, 1992), did not state the window period during which applications for the new allotment of Channel 230C3, Andover, Kansas, may be filed. The window period for filing applications will open on **May 18, 1992,** and close on **June 18, 1992.**

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-181

In re Applications of

BARRY SKIDELSKY	File No. BPH-870819MO
BRADMARK BROADCASTING COMPANY	File No. BPH-870819MT
NORMANDY BROADCASTING CORPORATION	File No. BPH-870819NK

For Construction Permit for
New FM Station, Channel 289B1,
Queensbury, New York

ERRATUM

Released: April 14, 1992

The *Order*, FCC 92R-26, adopted March 19, 1992 and released April 2, 1992, IS CORRECTED to show the MM Docket No. 90-181 in lieu of MM Docket No. 91-181.

BY DIRECTION OF THE REVIEW BOARD

Allan Sacks
Chief for Law

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

COOK INLET RADIO
PARTNERS, L.P.
Assignor

and File Nos. BAL-911220EA
BALH-91120EB

GREAT AMERICAN
TELEVISION AND
RADIO, INC.
Assignee

For Assignment of Licenses of
KOPA(AM)/KSLX(FM),
Scottsdale, Arizona

MEMORANDUM OPINION AND ORDER

Adopted: April 6, 1992; Released: April 7, 1992

By the Commission:

1. The Commission has before it for consideration the above-captioned applications for consent to assign the licenses of KOPA(AM)/KSLX(FM), Scottsdale, Arizona from Cook Inlet Radio Partners, L.P. ("Cook") to Great American Television and Radio Company, Inc. ("Great American"). Great American, the proposed assignee, is also the licensee of VHF television station KTSP(TV), Phoenix, Arizona. Because the Grade A contour of KTSP(TV) encompasses the entire community of Scottsdale, Arizona, a grant of the assignment applications would result in Great American owning attributable interests in a television station and an AM and FM radio station in the same market in violation of 47 C.F.R. Sec. 73.3555(b), the Commission's one-to-a-market rule.[1] Great American requests a waiver of the rule in connection with the proposed assignment. The waiver request is unopposed.

2. In support of its waiver request, Great American relies on the Commission's decision generally to permit television-radio combinations which meet the "Top 25 Markets/30 Voices" test set forth in *Amendment of Section 73.3555 of the Commission's Rules, the Broadcast Multiple Ownership Rules* ("Second Report and Order"), 4 FCC Rcd 1741 (1989), *recon. denied in part and granted in part*, 4 FCC Rcd 6489 (1989).[2] Specifically, Great American asserts that the Phoenix market, which includes Scottsdale, is the 20th largest Area of Dominant Influence (ADI) television market and has more than 30 separate radio and television voices. According to an exhibit provided by Great American, there will be 42 separately owned or operated broadcast stations in the Phoenix area in existence after the subject assignments are consummated. Great American states that this evidence is derived from the *Broadcasting Yearbook*.

3. In the *Second Report and Order*, the Commission set forth the standard for reviewing waivers of the "one-to-a-market" rule. The Commission concluded that it would "look favorably upon waiver requests when the radio and television stations involved are located in the top 25 ADI television markets as defined by Arbitron Ratings Company and in addition where, following the proposed combination, there will be at least 30 separately owned, operated and controlled broadcast licensees or 'voices'." *Second Report and Order*, 4 FCC Rcd at 1751. To determine the number of voices, the Commission counts all full-power commercial and non-commercial television stations licensed to the relevant ADI television market and the operating AM and FM radio stations licensed to the relevant TV metropolitan market, as defined by the most recent volume of Arbitron's *Television ADI Market Guide*. *Id.* at 1751 and 1759 nn.84 and 85. *See generally Arnold L. Chase*, 5 FCC Rcd 1642, 1646 (1990). Furthermore, the attribution provisions of the Commission's local ownership rules are used to determine the number of separately owned, operated, and controlled broadcast licensees or voices in the relevant area. *Second Report and Order*, 4 FCC Rcd at 1751, 1759 n.87. *See also Capital Cities/ABC, Inc.*, 4 FCC Rcd 5498 (1989). The Commission has determined that "the advantages of permitting radio-television combinations in the top 25 markets, which have numerous competing voices, generally would not undermine the benefits derived from the Commission's traditional pro-competitive and diversity policies." *The Helen Broadcasting Co. Limited Partnership*, 5 FCC Rcd 2829, 2833 (1990). *See Group W Radio Acquisition Co.*, 4 FCC Rcd 8343 (1989).

4. We have determined that the evidence presented by Great American demonstrates, based on our attribution rules, that the proposed combination will not result in fewer than 30 separately owned, operated and controlled broadcast stations in the Phoenix area, which ranks 20th of the ADI television markets, and which includes Scottsdale, the community of license of the subject stations.[3] *See Howard J. Braun, Esquire*, 4 FCC Rcd 5795 (1989). Accordingly, Great American's waiver request has provided the necessary documentation to meet the "Top 25 Markets/30 Voices" standard and, in the absence of

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[1] Section 73.3555(b) of the Commission's Rules prohibits the common ownership of radio and television stations in the same market if the 2 mV/m contour of an AM station or the 1 mV/m contour of an FM station encompasses the entire community of license of a television station or, conversely, if the Grade A contour of a television station encompasses the entire community of license of an AM or FM station.

[2] The "Top 25 Markets/30 Voices" standard is set forth in Note 7 to the one-to-a-market rule. *See* 47 C.F.R. Sec. 73.3555 n.7.

[3] Although Great American's exhibit indicates that there will be a total of 42 separately owned and operated stations in the relevant area after consummation, two radio stations listed, KFYI(AM) and KFFR(AM), are owned by the same corporate entity, The Broadcast Group, Inc. Therefore, these two stations constitute only one voice under the "Top 25 Markets/30 Voices" standard. Also, Great American lists a total of 5 AM and FM stations licensed to Globe, Arizona and Miami, Arizona which cannot be counted as voices under the "Top 25 Markets/30 Voices" standard because Globe and Miami are located in Gila County, which is outside the relevant Phoenix TV metropolitan

rebuttal, to demonstrate that waiver of the rule is warranted. *See, e.g., Susquehanna Radio Corp.*, 6 FCC Rcd 6547 (1991). Furthermore, Great American is otherwise qualified to be a Commission licensee, and, therefore, we find that a grant of the subject assignment applications would serve the public interest.

5. *Conclusion.* In view of the foregoing, IT IS ORDERED, That, the request for waiver of the Commission's one-to-a-market rule, 47 C.F.R. Sec. 73.3555(b), IS HEREBY GRANTED, and the applications for assignment of the licenses of KOPA(AM)/KSLX(FM), Scottsdale, Arizona, from Cook Inlet Radio Partners, L. P. to Great American Television and Radio Company, Inc. ARE HEREBY GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

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market according to the 1991 *Arbitron Ratings Television ADI Market Guide*. Nevertheless, we have determined, based on the Commission's ownership records and the 1991 *Arbitron Ratings Television ADI Market Guide*, that after the proposed combination, there will be at least 30 separately owned, controlled and operated broadcast stations licensed to the relevant markets.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 83-1376

In the Matter of

Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico and the Virgin Islands	RM-4436

ORDER

Adopted: March 31, 1992; Released: April 2, 1992

By the Chief, Common Carrier Bureau:

1. The Alaska Telephone Association (ATA) has filed a motion requesting a 60 day extension of time in which to file comments in this proceeding.[1] Oppositions have been filed by American Telephone and Telegraph, Inc. (AT&T) and Alascom, Inc. (Alascom). ATA has filed a reply to the AT&T and Alascom oppositions.

2. ATA states that the Master Agreement filed by AT&T, Alascom, and Telephone Utilities of Alaska, Inc. (TUA)[2] would dramatically alter the interstate and intrastate interexchange market structure in Alaska, and raises important issues regarding competition, universal service, and rates at the local, state and interstate levels. ATA states that it has not had sufficient time to review and conduct in-depth analysis of the Master Agreement and the nine volumes of supporting data. ATA states that AT&T, Alascom, and TUA have had years to conceptualize and prepare the Master Agreement in contrast to the few weeks it has had to review the Master Agreement and supporting data. ATA states that fairness and the interests of a meaningful record require granting the requested extension.

3. AT&T and Alascom argue that there has already been sufficient time for ATA to review the Master Agreement and supporting data. AT&T and Alascom argue that the basic structure of the agreement was announced in July 1991, and remains unchanged in the Master Agreement that was filed on January 29, 1992. AT&T and Alascom state that they met with ATA three times during 1991 and have additionally met numerous times with ATA's Board. AT&T states that the data submitted is almost exclusively standard separations data that ATA and its members deal with routinely. AT&T states that the parties to the Master Agreement need a prompt response because the agreement may be terminated by any of the parties to the agreement if the necessary regulatory approvals are not obtained by November 1, 1992.

4. We believe that the complexity of the issues presented in this proceeding warrants a brief period of additional time applicable to all parties for filing comments and reply comments. We will extend the time for filing comments and reply comments until April 20, 1992, and May 20, 1992, respectively. Granting the full extension requested by ATA would delay the timely resolution of this proceeding and has not been shown to be necessary. The time since the public filing of the Master Agreement until April 20 affords an adequate opportunity to file comments. In addition, the procedures applicable to this proceeding permit, in the interests of a complete record, presentations of views and data separate from formal comments.[3] ATA can thus present its views and other information it may develop in comments or in permitted presentations.

5. Accordingly, IT IS ORDERED, pursuant to sections 4(j) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(j) and 155(c), and authority delegated thereunder pursuant to Sections 0.91 and. 291 of the Commission's Rules, 47 C.F.R. §§ 0.91 and 0.291, that the motion of ATA for extension of time is GRANTED IN PART and otherwise denied. The time for filing comments is extended to April 20, 1992, and the time for filing reply comments is extended to May 20, 1992.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

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[1] *Public Notice*, CC Docket 83-1376, DA 92-236 (released March 4, 1992), Joint Petition and Associated Filings by AT&T, Alascom, and TUA Regarding Alaska Telecommunications Services and Petition to Establish Regulatory Policies Concerning the Alaska Telecommunications Market Structure Filed by General Communications, Inc.

[2] Alascom and TUA are wholly-owned subsidiaries of Pacific Telecom, Inc. (PTI).

[3] See 47 C.F.R. Section 1.1200 *et seq.*

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: April 2, 1992

PLEADING CYCLE ESTABLISHED FOR COMMENTS ON AMERITECH'S PETITION FOR STRUCTURAL RELIEF

CC Docket Nos. 88-2, Phase I, and 90-623

On March 24, 1992, the Ameritech Operating Companies (Ameritech) filed a notice of compliance with the Open Network Architecture (ONA) requirements for removal of the structural separation requirements that currently govern its participation in the enhanced services industry. Pursuant to the *BOC ONA Amendment Order*, 5 FCC Rcd 3103, the Bell Operating Companies (BOCs) are permitted to petition the Commission for relief from the structural separation requirements if the BOCs are technically prepared to offer their ONA services, have effective federal tariffs for each of their initial interstate ONA services, and have filed state tariffs for each of their initial intrastate ONA services. Ameritech states that it satisfies all of the Commission's conditions for removal of the structural separation requirement.

Interested parties should file comments on Ameritech's notice by **April 24, 1992,** and reply comments by **May 4, 1992,** with the Secretary, FCC, 1919 M Street, N.W., Washington, D.C. 20554. A copy should also be sent to Peggy Reitzel, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and to the Commission's contractor for public service records duplication: Downtown Copy Center, 1114 21st Street, N.W., Washington, D.C. 20036. Copies of Ameritech's notice can be obtained from Downtown Copy Center at (202) 452-1422.

We will treat this proceeding as non-restricted for purposes of the Commission's *ex parte* rules. *See generally* 47 C.F.R. §§ 1.1200-1.1216. For further information contact Peggy Reitzel, Policy and Program Planning Division of the Common Carrier Bureau, at (202) 632-4047.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: April 3, 1992

PLEADING CYCLE ESTABLISHED FOR SOUTHWESTERN BELL TELEPHONE COMPANY'S PETITION FOR WAIVER OF THE COMMISSION'S ACCESS TIME STANDARDS FOR 800 DATA BASE SERVICE

CC DOCKET NO. 86-10

On March 27, 1992, Southwestern Bell Telephone Company (SWBT) filed a petition for waiver of certain provisions of the Commission's *Memorandum Opinion and Order on Reconsideration and Second Supplemental Notice of Proposed Rulemaking* adopted August 1, 1991 in CC Docket No. 86-10, 6 FCC 5421 (*Reconsideration Order*).

Specifically, SWBT seeks a waiver of the access time standards established in the *Reconsideration Order*. Pursuant to these standards, the Bell Operating Companies and GTE Telephone Companies are required to reduce access times under a data base system of 800 access to five seconds or less for 97% of their originating 800 traffic by March 1993, and for all of their data base 800 traffic within two years thereafter. In addition, by March, 1995, the mean access time for each of these LEC's 800 data base traffic must be 2.5 seconds or less. *See* 6 FCC Rcd at 5425.

SWBT states that recent switch tests have shown that compliance with the Commission's access time standards is not possible without incurring undue expense and potential risk to the network. SWBT asks the Commission to waive the access time requirements of the *Reconsideration Order* to permit: (i) an access time of 5 seconds or less for 72% of SWBT's traffic by March 1993, with a mean access time of approximately 4.4 seconds; and (ii) an access time of 5 seconds or less for 94% of its traffic by March 1995, with a mean access time of less than 1.4 seconds.

As an alternative, SWBT seeks waiver of the five second access time standard plus extension of the March 1993 compliance date to December 31, 1993. SWBT states that extending the compliance date to December 31, 1993, will allow it to deploy Common Channel Signaling 7 interconnection at a larger number of end offices, thus increasing the percentage of 800 traffic with access times under five seconds from 72% to 91%, and decreasing the mean access time for 800 data base traffic when compared with the current 800 NXX system.

SWBT states that granting the waiver is in the public interest. By granting the waiver, it maintains that the Commission will be insuring an orderly transition to number portability at reasonable expense without compromise to the network.

Interested parties should consolidate their response to this petition with those filed in response to six other waiver petitions, (*see* Public Notice, DA 92-355, released on March 23, 1992), and file comments by April 13, 1992, and reply comments by April 23, 1992, with the Secretary, FCC, 1919 M Street, N.W., Washington, D.C. 20554. A copy should also be sent to Marian Gordon, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and to the Commissioner's contractor for public service records duplication: Downtown Copy Center, 1114 21st Street, N.W., Washington, D.C. 20036. Copies of the petition can be obtained from Downtown Copy Center at (202) 452-1422.

We will treat this proceeding as non-restricted for purposes of the Commission's *ex parte* rules. *See generally* 47 C.F.R. Sections 1.1200-1.1216. For further information, contact Marian Gordon or Gary Phillips, Policy and Program Planning Division, Common Carrier Bureau, at (202) 632-4047.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: April 3, 1992

ADVISORY COMMITTEE ON ADVANCED TELEVISION SERVICE IMPLEMENTATION SUBCOMMITTEE MEETING

April 21, 1992
10:30 A.M.
Commission Meeting Room (Room 856)
1919 M Street, N.W.
Washington, D.C.

The agenda for the meeting will consist of:

1. Introduction
2. Minutes of Last Meeting
3. Report of Working Party 1
   Policy and Regulation
4. Report of Working Party 2
   Transition Scenarios
5. Scheduling of Final Report Submissions
6. General Discussion
7. Other Business
8. Date and Location of Next Meeting
9. Adjournment

All interested persons are invited to attend. Those interested also may submit written statements at the meeting. Oral statements and discussion will be permitted under the direction of the Implementation Subcommittee Chairs.

Any questions regarding this meeting should be directed to George Vradenburg III at (213) 203-1334, Dr. James J. Tietjen at (609) 734-2237, or Gina Harrison at (202) 632-7792.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: April 7, 1992

PLEADING CYCLE ESTABLISHED FOR BELL ATLANTIC TELEPHONE COMPANIES PETITION FOR WAIVER OF THE COMMISSION'S ACCESS TIME STANDARDS FOR 800 DATA BASE SERVICE

CC DOCKET NO. 86-10

On April 3, 1992, Bell Atlantic Telephone Companies (Bell Atlantic) filed a petition for waiver of certain provisions of the Commission's *Memorandum Opinion and Order on Reconsideration and Second Supplemental Notice of Proposed Rulemaking* adopted August 1, 1991 in CC Docket No. 86-10, 6 FCC 5421 (*Reconsideration Order*).

Specifically, Bell Atlantic seeks a waiver of the access time standards established in the *Reconsideration Order*. Pursuant to these standards, the Bell Operating Companies and GTE Telephone Companies are required to reduce access times under a data base system of 800 access to five seconds or less for 97% of their originating 800 traffic by March 1993, and for all of their data base 800 traffic within two years thereafter. In addition, by March, 1995, the mean access time for each of these LEC's 800 data base traffic must be 2.5 seconds or less. *See* 6 FCC Rcd at 5425.

Bell Atlantic states that a waiver of the access time standards is necessary because actual testing of the database system has revealed that access times will be longer than previously projected. Bell Atlantic states that it already has SS7 capabilities in end offices serving 97% of its access lines but that, absent SS7 interconnection, access times for some of these lines will exceed five seconds. It states, further, that implementation of SS7 interconnection is complicated and time consuming and cannot be completed by March 1993.

Accordingly, Bell Atlantic asks the Commission to waive the access time requirements of the *Reconsideration Order* to permit: (i) an access time of 5 seconds or less for 85% of Bell Atlantic's traffic by March 1993, with an access time of 5.5 seconds or less for 97% of its traffic. Bell Atlantic states that granting the waiver is in the public interest in that it will insure an orderly transition to number portability without compromise to the network.

Interested parties should file comments by April 17, 1992, and reply comments by April 27, 1992, with the Secretary, FCC, 1919 M Street, N.W., Washington, D.C. 20554. A copy should also be sent to Marian Gordon, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and to the Commissioner's contractor for public service records duplication: Downtown Copy Center, 1114 21st Street, N.W., Washington, D.C. 20036. Copies of the petition can be obtained from Downtown Copy Center at (202) 452-1422.

We will treat this proceeding as non-restricted for purposes of the Commission's *ex parte* rules. *See generally* 47 C.F.R. Sections 1.1200-1.1216. For further information, contact Marian Gordon or Gary Phillips, Policy and Program Planning Division, Common Carrier Bureau, at (202) 632-4047.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

GE AMERICAN COMMUNICATIONS, INC. File No. I-T-C-91-078

Application for authority to provide service between the U.S. and Iceland

ORDER

Adopted: March 31, 1992; Released: April 14, 1992

By the Chief, International Facilities Division:

1. The Commission has under consideration an application filed by GE American Communications, Inc. (GE Americom) requesting authority pursuant to Section 214 of the Communications Act of 1934, as amended, to establish one T-1 (1.544 Mb/s) circuit via the Satcom F2R satellite between an earth station located in the Norfolk, Virginia area and an earth station to be constructed at a U.S. military installation in Keflavik, Iceland. The application was placed on public notice. Communications Satellite Corporation (Comsat) filed a petition to deny the application and GE Americom filed an opposition.

2. GE Americom states that the T-1 circuit will be used to provide a variety of one-way and two-way voice and data common user services on behalf of the Defense Department (DoD), including the Defense Switched Network and Defense Data Network services, in addition to specialized analog and digital services between the specified locations. According to GE Americom, military communications between the U.S. and Iceland are currently being transmitted via the North Atlantic Radio System (NARS), which was scheduled to be deactivated in the fourth quarter of 1991.

3. Since Iceland lies within the footprint of the Satcom F2R satellite, GE Americom believes that the application can be granted consistent with the Commission's Transborder policy which permits the use of domestic satellites for certain international services.[1] Although INTELSAT provides service between the U.S. and Iceland, GE Americom asserts it would be clearly uneconomical and impractical to use the INTELSAT system since it would require the construction of an international earth station in Keflavik at the military base, which would cost significantly more than a domestic satellite linearly-polarized facility. GE Americom also notes that it already operates earth stations in the Norfolk area which have antennas pointed at the Satcom F2R satellite. Use of INTELSAT would require telephone or other facilities to route traffic from Norfolk to an appropriate INTELSAT earth station. In addition, GE Americom states that use of INTELSAT in the Norfolk area would require the addition of antennas to GE Americom's earth stations. Finally, GE Americom characterizes the proposed service as adding Iceland to DCA's North Atlantic satellite-based military network, which already includes points in Greenland and which is provided over the Satcom F2R satellite.

4. Comsat asserts that the instant application should be denied because it does not satisfy the requirements of the Transborder policy. Comsat notes that the U.S. Court of Appeals in the *Jamaica Teleport* decision stated that a finding that use of INTELSAT would be uneconomical cannot be based solely on the fact that INTELSAT would charge a higher price than a domestic competitor.[2] Comsat also states that there is no current basis for the grant of two-way transborder services to points other than Canada and Mexico. In response to GE Americom's suggestion that it would have no objection to a grant of authority being based on Article XIV(g) of the INTELSAT Agreement, Comsat notes that the application does not contain sufficient information to justify such action.[3] According to Comsat, the mere fact that DoD is the intended customer does not automatically make the service an integral part of national security.

DISCUSSION

5. Under the Commission's Transborder policy, U.S. domestic satellites may be used for the provision of certain international services where either INTELSAT cannot provide the service or it would be clearly uneconomical or impractical to use the INTELSAT system. With respect to the former, GE Americom admits that INTELSAT can provide the service. In fact, the proposed service is currently being provided over the INTELSAT system during the pendency of this application. However, as stated above, GE Americom asserts that use of INTELSAT would be clearly uneconomical and impractical.

6. Based on the Commission's past interpretation of the "uneconomical or impractical" aspect of the Buckley letter criteria as involving operational impracticality, the Court in *Jamaica Teleport* concluded that this burden could be satisfied by showing that the INTELSAT system could not provide the service in question in its entirety and without duplication of facilities, and that the domestic satellite system could more nearly do so. 836 F.2d at 635. The arguments presented by GE Americom do not satisfy this requirement. There is no showing that INTELSAT cannot provide the service in its entirety. Indeed, the fact that GE Americom, subsequent to filing the instant application, was granted temporary authority to use INTELSAT facilities for the subject service is proof that the service in its entirety can be provided over the INTELSAT system.[4] In addition, GE Americom's analysis of the "uneconomical and impractical" requirement relies primarily on the additional costs that would be incurred using the INTELSAT system.[5] As the Court in *Jamaica Teleport* noted, a cost comparison where qualitative factors are not present may not satisfy the Buckley criteria. The Court recognized that:

> . . . higher prices for international service are to some degree inherent in INTELSAT's system of globally averaged rates, mandated under Article V(d) of the INTELSAT Treaty. Both that treaty and the Communications Satellite Act envisioned a regime under which INTELSAT would be protected from full-scale competition in the interest of other, overriding goals . . . 836 F.2d at 633.

7. Although GE Americom's application alludes to an existing network in stating that DCA is adding Iceland to its North Atlantic satellite-based network, which already

includes points in Greenland and which is also provided over the Satcom F2R satellite, we find this characterization insufficient to satisfy the "uneconomical and impractical" requirement. In a recent order, the Commission set forth the conditions under which two-way services could be authorized between the U.S. and non-contiguous points (i.e. other than Canada and Mexico).[6] The Commission found that the "uneconomical and impractical" standard could be met where the service proposed involved the extension of an existing U.S. domestic network. In such cases, the Commission has recognized that maximum efficiency would be gained through the use of one satellite to link a customer's numerous business locations simultaneously.[7]

8. There is no evidence that the service proposed here involves the extension of an existing domestic network. Although the Satcom F2R domestic satellite may be used for DoD's North Atlantic satellite-based network, it does not appear that this is the type of integrated network, involving service to multiple points, that would satisfy the "uneconomical and impractical" requirement. Rather, it appears that the service is merely a point-to-point link between the U.S. and Iceland. Under such circumstances, INTELSAT can clearly provide the service, and no qualitative aspect is present since no integrated domestic network is involved.

9. We agree with Comsat that the application does not contain sufficient information to justify grant of this application under the Article XIV(g) of the INTELSAT Agreement. As a prerequisite to granting authority based on Article XIV(g), a certification that the proposed service is solely for national security must be received from the State Department.

10. Accordingly, the application of GE American Communications, Inc., File No. I-T-C-91-078, IS DENIED.

11. This order is issued pursuant to Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] The Commission's Transborder policy is based on criteria set forth in a letter dated July 23, 1981 from then Under Secretary of State James L. Buckley to then FCC Chairman Mark Fowler (Buckley letter). The Buckley letter stated that domestic satellites could be used for public international telecommunications with nearby countries where: 1) INTELSAT could not provide the service; or 2) it would be clearly uneconomical or impractical to provide the planned service over the INTELSAT system. *See* Transborder Satellite Video Services, 88 FCC 2d 258 (1981); Satellite Business Systems, 88 FCC 2d 195 (1981).

[2] Teleport International, Ltd., 1 FCC Rcd 101 (1986), *remanded*, Communications Satellite Corp. v. F.C.C., 836 F.2d 623 (1988) (*Jamaica Teleport*).

[3] Article XIV(g) of the INTELSAT Agreement provides that, "This Agreement shall not apply to the establishment, acquisition or utilization of space segment facilities separate from the INTELSAT space segment facilities solely for national security purposes."

[4] On December 11, 1991 GE Americom was granted temporary authority (TAO-1959) until March 9, 1992 to test and operate a 5.6-meter transmit/receive Ku-band earth station at the Goddard Space Flight Center in Greenbelt, Maryland to provide service via the INTELSAT Atlantic Ocean Region satellites between the U.S. and Keflavik, Iceland.

[5] One of GE Americom's arguments for using a domestic satellite for the subject service was that it would be more economical if existing earth stations in the Norfolk area, which are directed at the Satcom F2R satellite, could be used. However, in a letter dated December 5, 1991 requesting temporary authority to establish the subject service via INTELSAT facilities, GE Americom stated that environmental impact issues forced the rerouting of the services through the Goddard Space Flight Center at Greenbelt, Maryland.

[6] GTE Spacenet Corp., et al., 6 FCC Rcd 6926 (CCB 1991).

[7] Satellite Business Systems, 88 FCC 2d at 207.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

COMMUNICATIONS SATELLITE CORPORATION — File No. CSS-90-002-LA

Application for authority to participate in the launch of the INMARSAT-2 (F-4)

ORDER AND AUTHORIZATION

Adopted: April 6, 1992; Released: April 14, 1992

By the Chief, International Facilities Division:

1. The Commission has under consideration an application, File Number CSS-90-002-LA, filed by the Communications Satellite Corporation (Comsat) on May 18, 1990, updated on March 13, 1992, for authority to participate in the launch, positioning and in-orbit testing of the INMARSAT-2 (F-4) satellite.

2. The application was placed on the Commission's Public Notice on June 20, 1990. No comments were received.

3. The INMARSAT-2 (F-4) was shipped from the United Kingdom by air transport and arrived at the launch site in Kourou, French Guyana, and is scheduled to be launched on April 15, 1992, utilizing an Ariane commercial launch vehicle. This satellite will be drifted to its operating position of 55^0 West Longitude in the Atlantic Ocean Region (AOR). It is anticipated that the INMARSAT-2 (F-4) will be in service by May 24, 1992.

4. The estimated costs associated with the INMARSAT-2 (F-4) are as follows (all amounts in real year dollars):

BAe Contract (including delivery price, engineering changes and amendments, launch support and performance incentives)	$ 71.7 million
Ariane Launch Vehicle and Services	$ 62.1 million
Insurance	$ 7.7 million
TOTAL INTELSAT	$141.5 million
TOTAL COMSAT (based on current ownership share of 24.9988%)	$ 35.4 million

5. In view of the foregoing and the need to provide the necessary satellite facilities to meet traffic requirements, we conclude that the public interest would be served by a grant of the subject request. Accordingly, Comsat is AUTHORIZED to participate in the launch and test program of the INMARSAT-2 (F-4) satellite to be positioned at 55^0 West Longitude, subject to the following terms and conditions:

(a) This authorization is limited to the described program. Any change in the authorized location due to a launch delay or other circumstances will be considered upon a proper request by Comsat for authority;

(b) Comsat shall furnish via the INMARSAT-2 (F-4) only those channels of communication for commercial service which have been, or may be, authorized by the Commission under Section 214 of the Communications Act of 1934, as amended;

(c) Within 30 days after completion of the testing program, Comsat shall provide the Commission with a summary report of its results and upon request, shall make the detailed test data available;

(d) Conduct of the program authorized here shall be without interruption of commercial satellite service now authorized at U.S. earth stations;

(e) Neither this authorization nor any right granted herein shall be assigned or otherwise transferred without approval of the Commission; and

(f) Unless extended or modified for good cause, this authorization shall terminate six months after the release date of this order.

6. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*See* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re

Florida Cellular Telephone Company — File No. 163500-92-10-MAF

Notice of Apparent Liability for Forfeiture Penalty for Station KNKA364 in the Domestic Public Cellular Radio Telecommunications Service at Pompano Beach, Florida

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 7, 1992; Released: April 14, 1992

By the Chief, Mobile Services Division:

1. On March 27, 1991, Florida Cellular Telephone Company (Florida Cellular) placed an additional cellular facility located at Pompano Beach, Florida ("the Copans Road cell") into operation and commenced service to the public pursuant to Section 22.9(d)(4) of the Commission's rules. Although Florida Cellular was permitted to construct, it was required to file FCC Form 489 the day it commenced operation. Notwithstanding, Florida Cellular began operation without filing an FCC Form 489 as required by Section 22.9(d) of the Commission's rules. Florida Cellular filed an FCC Form 489 notifying the Commission of the construction and operation of the Copans Road cell on July 29, 1991. Florida Cellular claims that the filing of FCC Form 489 was delayed due to an administrative error.

2. Section 22.9(d)(4) of the Commission's rules states:

> *Permissive changes or minor modifications of authorization.* The following changes do not require prior Commission authorization but merely notification. A Form 489 must be filed to notify of any permissive change and the licensee may commence service the day the Form 489 is postmarked.
>
> (4) Construction and operation of additional transmitter locations on the same frequency as allowed under Section 22.117(b);

Therefore, because Florida Cellular commenced operation without timely filing FCC Form 489 with the Commission, it is in apparent violation of Section 22.9(d).

3. Section 503(b) of the Communications Act states in pertinent part:

> Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this subsection, to have--
>
> (B) willfully or repeatedly failed to comply with any of the provisions of this Act or if any rule, regulation, or order issued by the Commission under this Act . . . shall be liable to the United States for a forfeiture penalty.
>
> (2) . . . Each day of a continuing violation shall constitute a separate offense.

We find that Florida Cellular's failure to file an FCC Form 489 until July 29, 1991, constitutes willful and repeated conduct within the terms of the statute.

4. Pursuant to our *Policy Statement, Standards for Assessing Forfeitures*, FCC 91-217, 6 FCC Rcd 4695 (1991), 56 Fed. Reg. 37665 (1991), *recon. pending*, the base forfeiture amount for failing to file required forms is $30,000. Consistent with this *Policy Statement*, we are adjusting downward the forfeiture to $6,000 because the failure to file an FCC Form 489 is a relatively minor violation and because Florida Cellular voluntarily disclosed its failure to file FCC Form 489.

5. Accordingly, pursuant to Section 503(b) of the Act of 1934, as amended, 47 U.S.C. Sec. 503(b), and Section 1.80(f)(4) of the Commission's rules, 47 C.F.R. Sec.1.80(f)(4), IT IS ORDERED that Florida Cellular IS APPARENTLY LIABLE FOR A FORFEITURE in the amount of Six Thousand Dollars ($6,000) for willful and repeated violations of the aforementioned rule. The amount specified was determined after consideration of the factors set forth in Section 503(b)(2) of the Communications Act of 1934, as amended.

6. Payment of the forfeiture may be made by mailing a check or similar instrument to the Commission within thirty (30) days of the release date of this order, payable to the order of the Federal Communications Commission to: Federal Communications Commission, Box 73482, Chicago, Illinois 60673-7482.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Mobile Services Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter Of

AMERICAN TELEPHONE
& TELEGRAPH CO. File No. I-T-C-92-111

Application for authority to acquire
and operate facilities for service
to Costa Rica, Honduras and Nicaragua

ORDER AND AUTHORIZATION

Adopted: April 6, 1992; Released: April 14, 1992

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, we find that authorization of the requested facilities and services is required by the public convenience and necessity.

2. Accordingly, IT IS ORDERED that Application File No. I-T-C-92-111 IS GRANTED, and AT&T is authorized to:

a. lease from its correspondent in Mexico (TELMEX) and operate a one-half interest in 72 additional voice-grade landline microwave circuits between the U.S.-Mexico border and the Mexico-Guatemala border;

b. lease from its correspondent in Guatemala (GUATEL) and operate a one-half interest in 72 additional voice-grade landline microwave circuits between the Mexico-Guatemala border and the Guatemala-El Salvador border;

c. lease from its correspondent in El Salvador (ANTEL) and operate a one-half interest in 72 additional voice-grade landline microwave circuits between the Guatemala-El Salvador border and the El Salvador-Honduras border;

d. lease from its correspondent in Honduras (HONDUTEL) and operate a one-half interest in 48 additional voice-grade landline microwave circuits between the El Salvador-Honduras border and the Honduras-Nicaragua border;

e. lease from its correspondent in Nicaragua (TELCOR) and operate a one-half interest in 24 additional voice-grade landline microwave circuits between the Honduras-Nicaragua border and the Nicaragua-Costa Rica border; and

f. use said facilities, together with the matching half-interests being provided by its correspondents HONDUTEL, TELCOR and ICE to provide AT&T's regularly authorized services between the U.S. and Honduras (24 voice-grade circuits), between the U.S. and Nicaragua (24 voice-grade circuits), and between the U.S. and Costa Rica (24 voice-grade circuits).

3. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T Communications Transmittal No. 1618
Tariff F.C.C. Nos. 1 and 13

MEMORANDUM OPINION AND ORDER

Adopted: March 17, 1992; Released: April 14, 1992

By the Commission:

I. INTRODUCTION

1. Transmittal No. 1618, filed May 17, 1989, was American Telephone and Telegraph Company's (AT&T's) first tariff filing under the Commission's price cap plan of incentive regulation for dominant interexchange carriers (IXCs).[1] By that transmittal, AT&T changed several of its interstate rates for Message Telecommunications Service and Wide Area Telecommunications Service, and set forth newly calculated Price Cap Index (PCI), Actual Price Index (API), and Service Band Index (SBI) values in its Tariff F.C.C. Nos. 1 and 13. Allnet Communication Services, Inc. (Allnet), along with several other parties,[2] filed petitions against Transmittal 1618, alleging generally that AT&T's filing lacked adequate supporting data. The Common Carrier Bureau denied these petitions and allowed Transmittal 1618 to become effective in an Order released June 30, 1989.[3]

2. On July 31, 1989, Allnet filed an application for review of the *June 30 Order*. Allnet requests that the Commission re-examine the Bureau's denial of its petition, and initiate an investigation seeking data sufficient to calculate the necessary adjustments to each PCI, API, and SBI supporting Transmittal 1618. For the reasons discussed below, we reject Allnet's view of the data it deems are necessary to perform these calculations, and we deny its application for review.

II. BACKGROUND AND PLEADINGS

3. In protesting Transmittal 1618, the petitioners contended generally that AT&T's first price cap filing was not accompanied by support materials sufficient to demonstrate compliance with the Commission's price cap rules. They argued in particular that AT&T failed to include demand data at the rate element level. For a number of reasons, discussed in paragraph 8, *infra*, the Bureau rejected these arguments and concluded that AT&T was not required to include demand data at the rate element level of detail.

4. In its application for review, Allnet again argues that AT&T failed to provide information sufficient to calculate necessary adjustments to each PCI, API, and SBI -- in particular, demand data at the rate element level of detail. Allnet Application at 2-4. Allnet contends that in its *June 30 Order*, the Bureau did not determine that AT&T had provided information sufficient to calculate the necessary adjustments to the affected APIs and SBIs, as required by Section 61.49 of the Rules, 47 C.F.R. § 61.49. Instead, says Allnet, the Bureau "abandoned the rule" and determined that the standard to be applied is whether AT&T provided sufficient information for the Bureau to determine whether AT&T complied with the price cap rules. *Id.* at 5. Allnet also notes that the Bureau even admitted that deficiencies existed in AT&T's presentation of the supporting information, but concluded that those deficiencies were small and did not require investigation to resolve. *Id.*

5. In its opposition, AT&T responds that in Transmittal 1618 it fully described the methodologies used to compute adjustments to the PCI, API, and SBI. AT&T Opposition at 2 and n. ***. AT&T further argues that Allnet did not attempt -- and does not now attempt -- to satisfy the stringent four-part test to overcome the *prima facie* presumption of lawfulness for below-cap, within-band tariff changes. *Id.* at 3. In addition, AT&T observes, Allnet does not cite any rule language which compels rate element level information to be disclosed with a tariff, and notes that even under rate of return regulation, AT&T was not required to file support data at the rate element level. *Id.* at 4-5. Finally, AT&T concludes that a requirement to furnish revenue data for each of the approximately 6000 rate elements for its capped services would be costly, burdensome, and inconsistent with the price cap plan's goal of reducing the costs of compliance with tariff filing requirements. *Id.* at 6.

6. Allnet replies that even though AT&T was not required to file tariff support data at the rate element level under rate of return regulation it should do so now because the Commission, in its *AT&T Price Cap Order*, recognized that AT&T might have to "deploy a higher level of resources initially to implement new data collection and tariff preparation mechanisms." Allnet Reply at 2-4, citing *AT&T Price Cap Order*, 4 FCC Rcd at 2965 (para. 176). Allnet then contends that if information sufficient to calculate the necessary adjustments to the API and SBI is not provided, the effects will be felt in future determinations of these indexes. Finally, Allnet asserts that if AT&T had complied with the Commission's rules in its initial price cap filing, it would not be burdensome to provide information at the rate element level on a going-forward basis. *Id.* at 5-7.

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[1] *See generally*, Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, 4 FCC Rcd 2873 (1989) (*AT&T Price Cap Order);* Erratum, 4 FCC Rcd 3379 (1989), *modified on recon.*, 5 FCC Rcd 665 (1991); *AT&T v. FCC*, No. 91-1178 (D.C. Cir. Apr. 15, 1991).

[2] Allnet filed a petition to investigate Transmittal 1618, while US Sprint Communications Company Limited Partnership and National Telecommunications Network each filed petitions to suspend and investigate the transmittal. Alascom, Inc., filed a petition to reject, or suspend and investigate Transmittal 1618, and Competitive Telecommunications Association filed a petition to suspend for one day and investigate. The State of Alaska also submitted a letter dated June 12, 1989, urging the Commission to reject or suspend and investigate Transmittal 1618.

[3] AT&T Communications, Transmittal No. 1618, Memorandum Opinion and Order, 4 FCC Rcd 5783 (Com.Car.Bur. 1989) (*June 30 Order).*

III. DISCUSSION

7. The thrust of Allnet's application for review is that AT&T should have submitted with Transmittal 1618 demand data at the rate element level to enable the calculation of the API and the SBI. Allnet believes that without these data neither the Commission nor commenting parties can make a meaningful determination of whether price cap formulas were correctly applied and interpreted. Allnet Application at 3. Allnet further notes that this material would provide a historical record of data patterns to help identify improper AT&T assumptions and analysis in future AT&T price cap filings. *Id.*

8. The Bureau in its *June 30 Order* explained that the API and the SBI are essentially composed of two parameters: base year quantities sold and price (existing and proposed). Those two parameters, it continued, are not subject to dispute and can be verified from existing records. Prices are given in existing and proposed tariffs, the Bureau said, while quantities are derived from business records AT&T routinely keeps. Therefore, the Bureau concluded that historical demand data, while significant to the calculation of the API and SBI, did not need to be filed at the rate element level. First, the Bureau noted, the work papers AT&T would have to submit would be voluminous. To derive the API or SBI, AT&T would have to perform a mathematical calculation 6,000 times, once for each of the approximately 6,000 rate elements regulated under the price cap rules. Second, the Bureau observed that the Commission did not require submission of rate element quantity data under rate of return regulation and collection of such data now would be inconsistent with the Commission's objective of minimizing filing burdens. The Bureau, finally, indicated that the submission of such data would likely raise competitive concerns. *June 30 Order*, 4 FCC Rcd at 5786 (para. 30).

9. After release of the Bureau's *June 30 Order*, this Commission had the opportunity to address whether AT&T is required to file demand data at the rate element level for a within-band tariff filing. In our February 1991 *AT&T Price Cap Reconsideration Order*, we rejected Allnet's view of the need for demand data at the rate element level, and basically adopted the Bureau's view instead. The Commission agreed with the Bureau that historical demand data are available from business records AT&T routinely keeps, and that this information may also be competitively sensitive. We further noted in our Order that in the process of computing the indexes, the historical base year quantities are simply multiplied by publicly-available prices to develop the indexes. The process of checking the accuracy of the indexes, we therefore concluded, was a simple matter of assuring that AT&T correctly multiplied the quantity times the price ratio for each rate element. Given the competitively sensitive nature of this information, and the voluminous workpapers AT&T would have to file to show that it has correctly multiplied the price and quantity data for each of approximately 6,000 rate elements, this Commission determined that AT&T is not required to disclose rate element demand when it files a within-band rate change. *AT&T Price Cap Reconsideration Order*, 6 FCC Rcd at 676 (para. 92).

10. The decision reached in the Bureau's *June 30 Order* with regard to the need for demand data at the rate element level of detail is consistent with our pronouncements on this subject in the *AT&T Price Cap Reconsideration Order*. Therefore, we conclude that the Bureau was correct in allowing Transmittal 1618 to become effective based on the cost support AT&T supplied with that transmittal, and that the demand data sought by Allnet were not required. Accordingly, we deny Allnet's application for review.

IV. ORDERING CLAUSE

11. Accordingly, IT IS ORDERED that the application for review filed by Allnet Communications Services, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Midyear 1986 Access Tariff Filings

Centel Telephone Companies
Tariff F.C.C. No. 1

ORDER

Adopted: April 6, 1992; Released: April 14, 1992

By the Chief, Common Carrier Bureau:

1. On March 6, 1992, the Central Telephone Companies (Centel) filed a petition for an extension of waiver of that portion of the Commission's *December 19 Order*,[1] directing the local exchange carriers (LECs) to provide originating WATS access lines (WALs) with Feature Group A (FGA) and Feature Group B (FGB) services. The waiver request is unopposed.

2. In general, Centel argues that in order to provide WALs with FGA and FGB it would need to make extensive modifications to its billing systems. Centel Petition at 2. It further asserts that there has been no demand for FGA or FGB WATS service. Centel also reports that at the end of 1991, over 98 percent of Centel's access lines were served by equal access end offices, and that the majority of the remaining access lines served by non-converted offices are smaller exchanges, where the likelihood of a carrier ordering WATS access through FGA and FGB is considered small. *Id.*

3. The Common Carrier Bureau has previously granted similar waiver requests from Centel and other local exchange carriers.[2] As there continues to be no demand for the service at issue and the costs of providing the service are not insignificant, we conclude that a grant of Centel's waiver request is warranted on the same terms and conditions as previously granted.

4. Accordingly, IT IS ORDERED that the petition for waiver filed by the Centel Telephone Companies IS GRANTED.

5. IT IS FURTHER ORDERED that the waiver granted by this Order expires on August 1, 1993.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

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[1] Midyear 1986 Access Tariff Filings, 1 FCC Rcd 1247 (1986) (*December 19 Order*).

[2] *See* Centel Telephone Companies, 2 FCC Rcd 5257 (Com.Car.Bur. 1987) (waiver granted to Centel and the Bell Atlantic Telephone Companies); *see also* Midyear 1986 Access Tariffs Filings, Petitions for Waiver, Memorandum Opinion and Order, 5 FCC Rcd 4840 (Com.Car.Bur. 1990).

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
March 24, 1992

Released: April 14, 1992

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Frank Battaglia, President 8210-AJZ
North American Broadcasting Co., Inc. 91100566
Licensee, Radio Station WALE(AM)
311 Westminster Mall
Providence, Rhode Island 02903

Dear Mr. Battaglia:

This is in reference to the Commission inquiry into the broadcast by Station WALE(AM), Providence, Rhode Island, of a hoax broadcast that one of its on-air personalities, Steve White, had been shot. According to a report from the Providence Police Department, on July 9, 1991, at approximately 5:45 p.m., WALE's news director, Thomas Moriarty, announced over the air that WALE talk show host Steve White had been "shot in the head" while outside the station on a break. According to the police report, Moriarty stated that WALE had been experiencing "frequency problems" at 5:40 p.m., and that Steve White had instructed Moriarty to make this announcement. The police report states that approximately ten minutes later, the station announced that the "shooting" had been a dramatization. In the meantime, the police report shows that several cruisers along with a lieutenant and a sergeant rushed to the scene where they were met by several members of the media who were trying to obtain information about the shooting.

On September 13, 1991, we sent you a letter inquiring as to the details of this broadcast and the surrounding circumstances. According to your reply, and an affidavit of Robert Michael Gray, WALE's program director, the following scenario took place on July 9: WALE was off the air from 4:42 p.m. to 5:45 p.m. to service the transmitter. Steve White left the building at 5:30 p.m., instructing Thomas Moriarty that, if the station went back on the air before 5:55 p.m. (the end of White's show), to announce that White had been shot while smoking a cigarette outside the station. Moriarty went on the air at 5:45 p.m., announcing that White had been shot. Gray states that, upon hearing the broadcast, he immediately called the station and told Ken Torres, the producer, to cease the broadcast immediately. When the broadcast continued, Gray claims he shut off the transmitter until Torres agreed to stop the broadcast. According to your response, when Gray turned the transmitter on one minute later, Torres gave a disclaimer,[1] which you claim to have aired every half hour for 30 hours thereafter, then aired the regular 5:55 p.m. newscast.[2]

You state that Gray terminated Torres, Moriarty and White, and that you immediately contacted your Washington, D.C. counsel. (Because you claim that White is no longer an employee of WALE, you did not include an affidavit from him.) You also state that the broadcast was spontaneous, without the approval or knowledge of management, and was not part of the regular newscast. According to your response, WALE received no letters but did receive approximately 10 telephone calls from listeners inquiring into the accuracy of the report. As to remedial efforts, you state that the station called the media to apologize and offered to pay the costs incurred by the Providence Police Department.

The Commission regards broadcast hoaxes as serious violations of stations' public interest responsibilities. *Walton Broadcasting*, 78 FCC 2d 880 (1976), *aff'd*, 78 FCC 2d 857 (1980), *aff'd without opinion*, 679 F.2d 263 (D.C. Cir. 1982). The Commission has recently taken action against licensees whose on-air personnel have knowingly broadcast false reports. *See Emmis Broadcasting (KSHE(FM), Crestwood, MO)*, 6 FCC Rcd 2289 (1991)($25,000 notice of apparent liability for violations of the Communication Act's prohibition on the transmission of false distress signals); *Letter to Radio Station KROQ-FM*, 6 FCC Rcd 7262 (1991)(admonition for broadcast of hoax murder confession and subsequent coverup by station employees without licensee knowledge or involvement).

Here, it appears that you neither knew, approved, nor ratified the broadcast of a false announcement that one of your on-air personnel had been shot, and therefore did not abdicate your responsibility to supervise your employees. The episode appears to have been a spontaneous isolated event, orchestrated solely by certain personnel. Further, it appears that you effectuated prompt disciplinary and remedial action.

Nevertheless, the Commission has long viewed the type of deliberate distortion of programming that occurred in this case as inconsistent with the public interest. It is also well established that licensees are ultimately responsible for the actions of their employees. *See Empire Broadcasting Corp.*, 25 FCC 2d 68 (1970). Furthermore, licensees will not be excused for past violations by reason of subsequent remedial action. *See Cate Communications Corp.*, 60 RR 2d 1386 (1986).

Accordingly, North American Broadcasting Co., Inc., licensee of Station WALE(AM), Providence, Rhode Island, IS HEREBY ADMONISHED for broadcasting the type of false and misleading information which violates the Commission's general policy requiring licensees to program their stations in the public interest. *See Policy Statement and Order*, 57 RR 2d 939 (1985). It is expected that North American Broadcasting Co., Inc. will take such steps as are necessary to assure that such violation is not repeated. This matter is being made a part of WALE's permanent record.

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[1] *See* Appendix for transcript of disclaimer provided by WALE.
[2] Although Gray claims that the newscast preceded the disclaimer, we do not consider this a material discrepancy.

With respect to our inquiry into allegations by both Rhode Island Radio, Inc., licensee of radio station WHJJ(AM) and WHJY(FM), Providence Rhode Island, and Lisa Bergeron, a WHJJ account executive, that WALE violated Section 73.1206 of the Commission's Rules by broadcasting a February 27, 1991, telephone conversation between Steve White and Lisa Bergeron without first notifying Lisa Bergeron that she was on the air, we do not have enough evidence to determine that a violation occurred. By way of background, the complainants alleged that Steve White called the WHJJ sales department, indicated he was interested in buying air time on WHJJ, and left a message in the name "Sam," with the telephone number of WALE. According to the complainants, when Ms. Bergeron returned the call, she thought she was speaking to a prospective client and learned later that the phone call had been aired live on WALE.

In response to two inquiries into this matter, you stated that Bergeron should have been aware that she was "on hold" on a call-in show, as the show was playing in the background; that Ken Torres answered the telephone in the usual manner that day, "W-A-L-E, do you want to speak with Steve White on the radio?"; that there was an abrupt change in the phone tone indicating that she was on the air when Steve White stated "You're on W-A-L-E." The complainants directly contradicted your account of the incident, stating that Ms. Bergeron thought she was calling a prospective client; that the telephone was not answered "W-A-L-E"; and that at no time during her conversation with Steve White did he reveal his identity or inform her that the conversation either would be or was being broadcast. They provided affidavits of a WALE listener, a WHJY account executive who overheard Ms. Bergeron's end of the conversation, and a former WALE employee, all of whom verified the complainants' version of the incident. The affidavits you provided from your secretary/receptionist, program director, production manager, senior account executive/talk show host, and a regular caller to WALE appear to substantiate your claims as to the manner in which WALE usually conducts its call-in procedures for the "Steve White Flight."

Section 73.1206 of the Commission's Rules states:

> Before recording a telephone conversation for broadcast, or broadcasting such conversation simultaneously with its occurrence, a licensee shall inform any party to the call of the licensee's intention to broadcast the conversation, except where such party is aware, or may be presumed to be aware from the circumstances of the conversation, that it is being or likely will be broadcast. Such awareness is presumed to exist only when the other party to the call is associated with the station (such as an employee or part-time reporter) or where the other party originates the call and it is obvious that it is in connection with a program in which the station customarily broadcasts telephone conversations.

In view of the directly contradictory evidence before us, and the apparent corroboration of both versions of events, we cannot sustain our burden with respect to an enforcement action. Thus, no further Commission action in this matter is warranted, and we will consider the matter closed.

Sincerely,

Edythe Wise, Chief
Complaints and Investigations Branch
Enforcement Division
Mass Media Bureau

cc: Daniel F. Van Horn, Esq.

APPENDIX

WALE'S POST-HOAX ANNOUNCEMENT
(Aired every half-hour for 30 hours)

I'm Rob Michaels, Program Director of Radio Station WALE, Providence. On Tuesday afternoon, July 9, at approximately 5:45 p.m., during the third hour of the Steve White Radio Program, an attempt was made to dramatize a fictional news account of an assassination attempt on the life of Steve White. I want to tell you that absolutely no harm was done to Steve White. The incident you may have heard was not true, and WALE's management and WALE's owner, Frank Battaglia, had no knowledge nor did they participate in this hoax in any way. WALE sincerely apologizes for any inconvenience this may have caused to any listeners, sponsors, local news organizations or law enforcement officials. I want to repeat that absolutely nothing happened to Steve White, that this was a hoax, and all participants in this hoax have been terminated from WALE's employ. Again, on behalf of WALE's advertisers, staff and management, we sincerely apologize for any inconvenience. Thank you very much.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-75

In the Matter of

Amendment of Section 73.202(b), RM-7953
Table of Allotments,
FM Broadcast Stations.
(Boone and Emmetsburg, Iowa)

NOTICE OF PROPOSED RULE MAKING

Adopted: April 1, 1992; Released: April 15, 1992

Comment Date: June 8, 1992
Reply Comment Date: June 23, 1992

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Radio Ingstad of Iowa, Inc. ("petitioner"), requesting the substitution of Channel 252C2 for Channel 252C3 at Boone, Iowa, and the modification of Station KIAB(FM)'s license to specify operation on the higher class channel. To accommodate the allotment of Channel 252C2 at Boone, petitioner also requests that Channel 261A be substituted for Channel 252A at Emmetsburg, Iowa, and the license of Station KEMB modified to specify operation on the alternate Class A channel. Petitioner states that it will apply for Channel 252C2, if allotted to Boone. Petitioner also states its intention to reimburse the licensee of Station KEMB for the reasonable costs associated with the station's channel change.

2. Channel 252C2 can be allotted to Boone in compliance with the Commission's minimum distance separation requirements with a site restriction of 31.3 kilometers (19.4 miles) southwest to accommodate petitioner's desired transmitter site. Channel 261A can be allotted to Emmetsburg with a site restriction of 12.1 kilometers (7.5 miles) west.[1] We note that Channel 261A cannot be allotted to Emmetsburg at the coordinates specified in Station KEMB's license. In this connection, it is Commission policy not to force a station to change its transmitter site in order to accommodate a new allotment elsewhere. However, we are proposing this channel change because petitioner has provided a letter from Jacobson Broadcasting Corporation ("Jacobson"), licensee of Station KEMB, attesting to its willingness to change channel and transmitter site.[2] We also need not issue an *Order to Show Cause* because Jacobson has consented to the channel change. As requested, we propose to modify petitioner's license for Station KIAB(FM) to specify operation on the higher class channel. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 252C2 at Boone or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

3. We believe the public interest would be served by proposing the substitution of Channel 252C2 for Channel 252C3 at Boone, Iowa, and the substitution of Channel 261A for Channel 252A at Emmetsburg, Iowa, since it could provide Boone with a wide coverage area FM service and enable Station KIAB(FM) to expand its coverage area. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Boone, Iowa	252C3, 257A	252C2, 257A
Emmetsburg, Iowa	252A	261A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **June 8, 1992,** and reply comments on or before **June 23, 1992,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Clifford M. Harrington, Esq.
Matthew P. Zinn, Esq.
Fisher, Wayland, Cooper and Leader
1255 - 23rd Street, N.W., Suite 800
Washington, D.C. 20037-1125
(Counsel to petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of*

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[1] The coordinates for Channel 252C2 at Boone are North Latitude 41-49-00 and West Longitude 93-42-00. The coordinates for Channel 261A at Emmetsburg are 43-04-00 and 94-49-00.

[2] We recognize that Jacobson desires to operate on Channel 261A at its present transmitter site through the use of a directional antenna, if necessary. Further, Jacobson states that it may withdraw its consent to the channel change if, prior to the conclusion of the rule making, it finds that such operation would not be possible. We wish to make clear that if the channel substitutions proposed herein are adopted, Jacobson will be required to take such steps as are necessary to ensure that Station KEMB operates in compliance with the Commission's minimum distance separation and other technical requirements.

the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required*. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures*. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service*. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies*. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings*. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-71

In the Matter of

Amendment of Section 73.202(b), RM-7926
Table of Allotments,
FM Broadcast Stations.
(Longwood, North Carolina)

NOTICE OF PROPOSED RULE MAKING

Adopted: April 2, 1992; Released: April 15, 1992

Comment Date: June 8, 1992
Reply Comment Date: June 23, 1992

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Longwood Broadcasters ("petitioner") requesting the allotment of Channel 237A to Longwood, North Carolina, as the community's first local FM service.[1] Petitioner states that it will apply for the channel, if allotted.

2. We believe the public interest would be served by proposing the allotment of Channel 237A to Longwood since it could provide the community with its first local FM transmission service. Channel 237A can be allotted to Longwood in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.[2]

3. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Longwood, North Carolina	--	237A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **June 8, 1992,** and reply comments on or before **June 23, 1992,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Mark N. Lipp, Esq.
Mullin, Rhyne, Emmons & Topel
1000 Connecticut Avenue, N.W., Suite 500
Washington, D.C. 20036
(Counsel to petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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[1] The Commission originally proposed the allotment of Channel 235A to Longwood at the request of Great Southern Media in MM Docket 89-327. In comments thereto, Great Southern Media withdrew its interest in the channel and the only other expression of interest, that of Longwood Broadcasters, was untimely-filed. Therefore, the Commission dismissed the proposal in the *Report and Order* in MM Docket 89-327 but stated that a separate *Notice of Proposed Rule Making* would be issued since the resolution of the proceeding permitted the allotment. *See* 7 FCC Rcd 544, 547. We are proposing Channel 237A instead of Channel 235A because it permits operation at 6 kW, rather than the 3 kW limitation which was in effect at the time Great Southern Media's petition was filed.

[2] The coordinates for Channel 237A at Longwood are North Latitude 34-00-12 and West Longitude 78-32-30.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-72

In the Matter of

Amendment of Section 73.202(b), RM-7928
Table of Allotments,
FM Broadcast Stations.
(Hatteras, North Carolina)

NOTICE OF PROPOSED RULE MAKING

Adopted: April 2, 1992; Released: April 15, 1992

Comment Date: June 8, 1992
Reply Comment Date: June 23, 1992

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Hurricane Communications ("petitioner") requesting the substitution of Channel 233C1 for Channel 232A at Hatteras, North Carolina, and the modification of its construction permit (BPH-910305MA) to specify operation on the higher class channel. Petitioner states that it will apply for the channel, if allotted.

2. We believe the public interest would be served by proposing the substitution of Channel 233C1 for Channel 232A at Hatteras since it could provide the community with an additional wide coverage area FM service. Channel 233C1 can be allotted to Hatteras in compliance with the Commission's minimum distance separation requirements at the transmitter site specified in the petitioner's outstanding construction permit.[1] As requested, we also propose to modify petitioner's construction permit to specify operation on Channel 233C1 in lieu of Channel 232A. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of the channel at Hatteras or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

3. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Hatteras, North Carolina	232A, 246C1	233C1, 246C1

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **June 8, 1992,** and reply comments on or before **June 23, 1992,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

William J. Pennington, III
P.O. Box 4203
Wilmington, North Carolina 28406
(Counsel to petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been

[1] The coordinates for Channel 233C1 at Hatteras are North Latitude 35-15-38 and North Latitude 75-35-02.

We note that Robert L. Purcell requested the substitution of Channel 268A for Channel 232A at Hatteras, as well as a channel change at Atlantic, North Carolina, in order to accommodate his request to allot Channel 297C1 to Atlantic Beach, North Carolina. *See* 6 FCC Rcd 7273 (1991) (MM Docket No. 91-358). However, in his reply comments, Purcell has withdrawn the Hatteras substitution portion of his proposal. Therefore, there is no conflict between the instant proposal and the earlier proposal by Purcell.

served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T COMMUNICATIONS,
Complainant,

v. File No. E-90-19

NATIONAL EXCHANGE CARRIER ASSOCIATION, INC., AND THE MAJOR PARTICIPANTS IN ITS 1988 CARRIER COMMON LINE POOL
Defendants.

FEDERAL COMMUNICATIONS COMMISSION

Gregory A. Weiss
Deputy Chief (Operations)
Enforcement Division
Common Carrier Bureau

ORDER

Adopted: March 30, 1992; Released: April 15, 1992

By the Deputy Chief, Enforcement Division, Common Carrier Bureau:

1. On October 3, 1989, AT&T Communications (AT&T) filed the above-captioned complaint against the National Exchange Carrier Association, Inc. ("NECA"), alleging that the NECA carrier common line rate for 1988 was unjust and unreasonable in violation of 47 U.S.C. § 201(b). This action was filed by AT&T as a companion proceeding to a complaint against Southwestern Bell Telephone Company, a local exchange carrier ("LEC") that participated in NECA's Carrier Common Line pool.

2. On February 4, 1992, AT&T filed a motion to dismiss this complaint with prejudice. AT&T states that as a result of discussions between the parties, the companion complaint was dismissed by the Commission.[1] Therefore, AT&T concludes that no purpose would be served by the continued pendency of this proceeding against NECA.

3. We are satisfied that dismissal of this complaint will serve the public interest by eliminating the expenditure of further time and resources of the parties and of this Commission.

4. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and authority delegated under 47 C.F.R. § 0.291, that the request for dismissal of the above-captioned complaint IS GRANTED.

5. IT IS FURTHER ORDERED that the above-captioned complaint IS DISMISSED WITH PREJUDICE and the proceeding IS TERMINATED.

[1]AT&T Communications v. Southern New England Telephone Co., 7 FCC Rcd 924 (Enf. Div. Com. Car. Bur. 1992).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-69

In re Applications of

MISSISSIPPI VALLEY BROADCASTERS, INC. (hereafter "Broadcasters")	File No. BPH-910118MA
TCOM, INC. (hereafter "TCOM")	File No. BPH-910122MA
BROADCAST PROPERTIES OF LA CROSSE, INC. (hereafter "La Crosse")	File No. BPH-910122MJ

For Construction Permit
for a New FM Station
on Channel 292C3 in
La Crosse, Wisconsin

HEARING DESIGNATION ORDER

Adopted: April 1, 1992; Released: April 15, 1992

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.[1]

2. *Environmental.* Our engineering study based upon OST Bulletin No. 65, October, 1985 entitled "Evaluating Compliance with Specific Guidelines for Human Exposure to Radiofrequency Radiation" reveals that neither Broadcasters nor TCOM addressed the matter of how they would protect workers on their respective towers from RF radiation exposure. *See* 47 C.F.R. § 1.1307(b). Consequently, we are concerned that Broadcasters and TCOM may have failed to comply with the environmental criteria set forth in the *Report and Order* in GEN Docket No. 79-163, 51 Fed. Reg. 14999 (April 12, 1986). *See also Public Notice* entitled "Further Guidance for Broadcasters Regarding Radiofrequency Radiation and the Environment" (released January 28, 1986). Under the rules, applicants must determine whether their proposals would have a significant environmental effect under the criteria set out in 47 C.F.R. § 1.1307. If the application is determined to be subject to environmental processing under the 47 C.F.R. § 1.1307 criteria, the applicant must then submit an Environmental Assessment (EA) containing the information delineated in 47 C.F.R. § 1.1311. 47 C.F.R. § 1.1307(b) states that an EA must be prepared if the proposed operation would cause exposure to workers exceeding specific standards. Since Broadcasters and TCOM failed to indicate how workers engaged in maintenance and repair on the tower would be protected from exposure to levels exceeding the ANSI guidelines, the applicants will be required to submit the environmental impact information described in 47 C.F.R. § 1.1311. *See generally* OST Bulletin No. 65, *supra*, at 28. Accordingly, Broadcasters and TCOM will be required to file, within 30 days of the release of this Order, an EA with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. *See Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980). In the event the Mass Media Bureau determines, based on its analysis of the Environmental Assessments, that the proposal will not have a significant impact upon the quality of the human environment, the contingent environmental issue shall be deleted, and the presiding judge shall thereafter not consider the environmental effects of the respective proposals. *See* 47 C.F.R. § 1.1308(d).

3. *FAA.* Since no determination has been received from the Federal Aviation Administration as to whether the antenna proposed by TCOM would constitute a hazard to air navigation, an issue with respect thereto will be included and the F.A.A. made a party to the proceeding.

4. *Divestiture.* La Crosse is the licensee of WLXR(FM), La Crosse, Wisconsin. La Crosse has stated that it will divest WLXR (FM) in the event of grant of the referenced application. Accordingly, in the event of grant of its application, La Crosse will be required to divest WLXR(FM) prior to the commencement of program test authority.

5. *Late-Filed Amendment.* Broadcasters petitioned for leave to amend its application on April 5, 1991 and February 25, 1992. The accompanying amendments were filed after April 4, 1991, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

6. *Comparative Coverage.* Data submitted by the applicants indicate there would be a significant difference in the size of the populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

[1] A competing application (File No. BPH-910122MB), filed by John H. White, was dismissed for failure to pay a required fee. An appeal of the dismissal has been filed with, and is currently pending before, the Commission's Office of Managing Director.

7. *Conclusion.* Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

8. ACCORDINGLY, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to Broadcasters or TCOM in which it is concluded that the proposed facility is likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. §§ 1.1301- 1319.

2. To determine whether there is a reasonable possibility that the tower height and location proposed by TCOM would constitute a hazard to air navigation.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

9. IT IS FURTHER ORDERED, That in accordance with paragraph 2 hereinabove, Broadcasters and TCOM shall submit the environmental assessments required by 47 C.F.R. § 1.1311 to the presiding Administrative Law Judge within 30 days of the release of this Order, with a copy to the Chief, Audio Services Division.

10. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

11. IT IS FURTHER ORDERED, That in the event of grant of La Crosse's application, La Crosse will be ordered to divest Station WLXR(FM) prior to the commencement of program test authority.

12. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Broadcasters ARE GRANTED and the corresponding April 5, 1991 and February 25, 1992 amendments ARE ACCEPTED to the extent indicated in paragraph 6 above.

13. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

14. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order. Pursuant to Section 1.325(c) of the Commission's Rules, within five days after the date established for filing notices of appearance, the applicants shall serve upon the other parties that have filed notices of appearance the materials listed in: (a) the Standard Document Production Order (see Section 1.325(c)(1) of the Rules); and (b) the Standardized Integration Statement (see Section 1.325(c)(2) of the Rules), which must also be filed with the presiding officer. Failure to so serve the required materials may constitute a failure to prosecute, resulting in dismissal of the application. *See generally Proposals to Reform the Commission's Comparative Hearing Process* (Report and Order in Gen. Doc. 90-264), 6 FCC Rcd 157, 160-1, 166, 168 (1990), *Erratum*, 6 FCC Rcd 3472 (1991), *recon. granted in part*, 6 FCC Rcd 3403 (1991).

15. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-70

In re Applications of

SABLE COMMUNITY BROADCASTING CORPORATION
(hereafter "Sable")
Channel 217A
Hobson City, Alabama — File No. BPED-851003MB

BOARD OF TRUSTEES SHORTER COLLEGE
(hereafter "Shorter")
Channel 217A
Rome, Georgia — File No. BPED-860205MD

GADSDEN STATE COMMUNITY COLLEGE
(hereafter "State")
Radio Station WSGN (FM)
Channel 217C2
Gadsden, Alabama — File No. BPED-860307MK

TRINITY CHRISTIAN ACADEMY
(hereafter "Trinity")
Channel 217A
Oxford, Alabama — File No. BPED-860512MB

For Construction Permits for New and Modified Noncommercial FM FM Facilities on Channel 217 (91.3 MHz)

HEARING DESIGNATION ORDER

Adopted: April 1, 1992; **Released: April 15, 1992**

By the Chief, Audio Services Division:

1. The Commission has under consideration the above-captioned mutually exclusive applications.

2. *Preliminary Matter.* Three of the four captioned applicants are proposing to construct new facilities on Channel 217; State is proposing to upgrade its licensed facilities from Channel 218A (91.5 MHz) to Channel 217C2. Section 73.509 of the Commission's rules states, in pertinent part, that applications for new or modified noncommercial FM facilities will not be accepted if the proposed operations of co-channel facilities involve overlap of the interfering (40 dBU) and protected (60 dBU) signal strength contours of the respective stations. According to our engineering analysis, it is clear that all of the stations are involved in some overlap situations.[1] Accordingly, the applications are mutually exclusive and must be consolidated for hearing. *Ashbacker Radio Co. v. FCC*, 326 US 327 (1948).

3. *Sable.* Sable indicates that it will cost $49,650 to construct and operate its proposed facilities for three months. While it claims to have $10,000 in existing and new capital, the majority of its expenses are to be covered by a grant from a $40,000 grant from the National Telecommunications Information Agency. Our records indicate that Sable's proposal was not granted. Accordingly, an issue must be specified in this matter.

4. Applicants for new broadcast stations are required by Section 73.3580 of the Commission's Rules to give local notice of the filing of their applications. We have no indication that Sable published the required notice. To remedy this deficiency, Sable must publish local notice of the application, if it has not already done so, and so inform the presiding Administrative Law Judge within 30 days of the release of this Order, or an appropriate issue will be specified by the Judge.

5. *Shorter.* Section II, Item 4 of FCC Form 340 (May, 1985) required governmental and public educational institutional applicants to specify the residential address for each member of its governing board. Shorter has not completed this item correctly, providing a post office box number for four members (Herrin, Todd, Whitworth and Wyatt) of its governing board. Accordingly, Shorter must submit an amendment giving all the information required by this item to the presiding Administrative Law Judge within thirty days of the release of this Order.

6. Shorter's application contains two engineering sections (Section V-B) listing two differing transmitter sites. One section lists the site's longitude as 85 degrees-11 minutes- *50* seconds; the second changes the longitude to 85 degrees-11 minutes- *45* seconds. Since the corresponding site maps agree with the respective listed coordinates, there is no question of the applicant's acceptability in this regard. However, Shorter's inclusion of both sets requires formal clarification of its intent. Therefore, Shorter will be required to submit a clarifying amendment to the presiding Administrative Law Judge within thirty days of the release of this Order.

7. *State.* On March 10, 1992, State tendered a major change amendment to its application, proposing to change its frequency from Channel 217C2 to Channel 218C3.

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[1] Specifically, our study reveals the following:

Protected Contour Of	Receiving Interference From
Sable	State, Trinity
Shorter	State
State	Sable, Shorter, Trinity
Trinity	Sable, State

7. *State*. On March 10, 1992, State tendered a major change amendment to its application, proposing to change its frequency from Channel 217C2 to Channel 218C3. Section 73.3573(a)(1) of the Commission's rules defines such changes as "major change" amendments, which require specification of a new cut-off date to enable interested parties a restricted period to file petitions to deny. State acknowledges this fact, and requests waiver of the Commission's processing rules in this regard. In support of this request, State claims that acceptance of the amendment would resolve mutual exclusivity with all other applicants in this proceeding. While this claim may be true, acceptance after its application proceeded through the Commission's cut-off procedures would deprive theoretical potential applicants and/or objectors of any reasonable notice of its revised intentions. *Letter to James P. Riley, Esq.*, 6 FCC Rcd 4382, 4383 (1991). Accordingly, State's request for waiver will be denied and its March 10, 1992 amendment will be returned.

8. On November 26, 1991, State was requested to submit an amendment demonstrating its compliance with the provisions in 47 C.F.R. § 73.525 governing television channel 6 protection. *Letter to Gadsden State Community College from Dennis Williams, Chief, FM Branch*. While State responded, its amendment demonstrated compliance with this rule section in terms of its proposed amendment to Channel 218C3. As noted above, that amendment must be returned. Accordingly, we have no evidence that State's operations on Channel 217C2 comply with the provisions in § 73.525. An issue will therefore be specified.[2]

9. *Trinity*. Trinity petitioned for leave to amend its application on January 24, 1992. The accompanying amendment was filed after January 13, 1992, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

10. *Other matters*. Our engineering study indicates that the proposals submitted by Sable and Shorter may significantly exceed the ANSI guidelines for human exposure to radio frequency (RF) radiation as outlined in OST Bulletin No. 65 (October 1985), failing specifically to address how each intends to resolve any RF exposure to workers on their respective towers. Consequently, we are concerned each may have failed to comply with the environmental criteria set forth in the *Report and Order* in GEN Docket No. 79-163, 51 Fed. Reg. 14999 (April 12, 1986). *See also, Public Notice* entitled "Further Guidance for Broadcasters Regarding Radiofrequency Radiation and the Environment" (released January 24, 1986). Under the rules, applicants must determine whether their proposals would have a significant environmental effect under the criteria set out in 47 C.F.R. § 1.1307. If the application is determined to be subject to environmental processing under the 47 C.F.R. § 1.1307 criteria, the applicant must then submit an Environmental Assessment (EA) containing the information delineated in 47 C.F.R. § 1.1311. 47 C.F.R. § 1.1307 states that an EA must be prepared if the proposed operation would cause exposure to workers or the general public to levels of RF radiation exceeding specific standards. Since Sable and Shorter's proposals may have a significant environmental impact as defined by 47 C.F.R. § 1.1307, both will be required to submit the environmental impact information described in 47 C.F.R. § 1.1311. *See generally*, OST Bulletin No. 65 (October, 1985) entitled "Evaluating Compliance With FCC-Specified Guidelines for Human Exposure to Radiofrequency Radiation," at 28. Sable and Shorter will therefore be required to file, within 30 days of the release of this Order, an EA with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. *See Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980). In the event the Mass Media Bureau determines, based on its analysis of the environmental assessments, that the applicants' proposals will not have a significant impact upon the quality of the human environment, the contingent environmental issue will be deleted and the presiding judge shall therefore not consider the environmental effects of the proposal. *See* 47 C.F.R. § 1.1308(d).

11. The applicants have not indicated whether an attempt has been made to negotiate a share-time arrangement. Therefore, an issue will be specified to determine whether a share-time arrangement between the applicants would be the most effective use of the frequency and thus better serve the public interest. *Granfalloon Denver Educational Broadcasting, Inc.*, 43 Fed. Reg. 49560 (1978). In the event that this issue is resolved in the affirmative, an issue will also be specified to determine the nature of such an arrangement. It should be noted that our action specifying a share-time issue is not intended to preclude the applicants, either before the commencement of the hearing or at any time during the course of the hearing, from participating in negotiations with a view toward establishing a share-time agreement among themselves.

12. The respective proposals are for different communities. Only Sable and Trinity serve substantial areas in common. Consequently, in this situation, in addition to determining pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the two proposals would best provide a fair, efficient and equitable distribution of radio service, a contingent comparative issue will also be specified. In all other situations, it will be necessary only to determine pursuant to Section 307(b), which of the proposals would best provide a fair, efficient and equitable distribution of radio services.

13. Inasmuch as it appears that there would be a significant difference in the size of the populations which would receive service from the proposals, and since this proceeding involves competing applicants for noncommercial educational facilities, the standard areas and populations issue will be modified in accordance with the Commission's prior action in *New York University*, FCC 67-673,

[2] The Commission's letter inadvertently stated that failure to respond to this request for additional information would subject the application to dismissal for failure to prosecute.

released June 8, 1967, 10 RR 2d 215 (1967). Thus, the evidence adduced under this issue will be limited to available noncommercial educational FM signals within the respective service areas.

14. Except as indicated above, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding.

15. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Sable whether the applicant is financially qualified.

2. To determine whether State is in compliance with the provisions of 47 C.F.R. § 73.525.

3. If a final environmental impact statement is issued in which it is concluded that Sable and/or Shorter's proposed facilities are likely to have an adverse effect on the quality of the environment, to determine whether the proposals are consistent with the National Environmental Policy Act, as implemented by Sections 1.1301-1309 of the Commission's Rules.

4. To determine, where appropriate: (a) the number of other reserved channel noncommercial educational FM services available in the proposed service area of each applicant, and the area and populations served thereby; (b) whether a share-time arrangement between some or all of the applicants would result in the most efficient use of the channel and thus better serve the public interest and, if so, the terms and conditions thereof; and (c) in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

5. To determine, in the event it is concluded that a choice between Sable and Trinity's applications should not be based solely on considerations relating to Section 307(b), the extent to which each of the proposed operations will be integrated into the overall educational operation and objectives of the respective applicants; and whether other factors in the record demonstrate that one applicant will provide a superior FM educational broadcast service.

6. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

16. IT IS FURTHER ORDERED, That Sable shall inform the presiding Administrative Law Judge within 30 days of the release of this Order as to whether local notice of filing of its application has been published.

17. IT IS FURTHER ORDERED, That Shorter shall submit an amendment which contains the information required by Section II, Item 4 of FCC Form 340 to the presiding Administrative Law Judge within 30 days of the release of this order.

18. IT IS FURTHER ORDERED, That, pursuant to paragraph 6 hereinabove, Shorter shall submit an amendment clarifying its dual technical sections with the presiding Administrative Law Judge within 30 days of the release of this Order.

19. IT IS FURTHER ORDERED, That the request for waiver of the FM application processing rules filed by State IS DENIED, and the accompanying amendment IS RETURNED.

20. IT IS FURTHER ORDERED, That the petition for leave to amend filed by Trinity IS GRANTED, and the corresponding amendment IS ACCEPTED to the extent indicated herein.

21. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, Sable and Shorter shall submit the environmental assessment required by § 1.1311 to the presiding Administrative Law Judge, with a copy to the Chief, Audio Services Division.

22. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington D.C. 20554.

23. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

24. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: April 2, 1992

Common Carrier Bureau

OUTAGE REPORTING REQUIREMENTS DEDICATED FAX NUMBER ANNOUNCED

By *Report and Order* in CC Docket 91-273 (FCC 92-58 released February 27, 1992), the Commission added Section 63.100 to its rules to require that any local exchange or interexchange common carrier that operates transmission or switching facilities and provides access service or interstate or international telecommunications service, promptly notify the Commission of any outage which potentially affects 50,000 or more customers on any facilities owned or operated by the carrier, if the outage continues for 30 or more minutes. The rule is effective April 6, 1992. *See Notification by Common Carriers of Service Disruptions,* 57 Fed. Reg. 7883 (March 5, 1992).

As stated in Public Notice DA 92-239 dated March 2, 1992, the Office of Management and Budget (OMB) issued contingent approval of the reporting requirement based on information furnished in connection with the Commission's *Notice of Proposed Rulemaking* in this proceeding. On March 23, 1992, OMB approved the reporting requirement set forth in the rule, under OMB Control No. 3060-0484, through August 31, 1993.

The Commission's News Release (Report No. DC-2052, February 13, 1992), provided FAX numbers for the Watch Officers in DC and Nebraska. Tests to the DC number disclose that it sometimes is busy; therefore, an additional FAX, dedicated for outage reporting by carriers, has been installed in DC for primary use. Moreover, carriers were asked in the *Report and Order* to telephone the Watch Officer, after transmitting their facsimile or other record means of notification, to verify receipt by the Commission. The contact numbers for the Watch Officers are:

Watch Officers	FAX Numbers	Telephone Numbers
Washington, DC	(202) 632-1550 (dedicated) (202) 653-5402 (backup)	(202) 632-6975
Grand Island, NE	(308) 381-4757 (backup)	(308) 381-4721

Should difficulty be encountered in transmitting a FAX message, the carrier may telephone a Watch Officer for assistance.

The Commission's concern expressed in the *Report and Order* focuses on loss of service to the public and the need for a systematic means by which to monitor, on a timely basis, major telephone service outages of local exchange and interexchange carriers throughout the nation which operate transmission or switching facilities and provide access service or interstate or international telecommunications service. We urge those carriers to review the *Report and Order*, and Rule Section 63.100, to ensure proper reporting procedures beginning April 6, 1992.

For further information, contact Abraham A. Leib, Chief, Domestic Services Branch, Domestic Facilities Division, Common Carrier Bureau (202) 634-1816.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: March 30, 1992

FIFTH INTERIM REPORT ON ADVANCED TELEVISION SERVICE RELEASED

The Commission has released the main text of the Fifth Interim Report of the Advisory Committee on Advanced Television Service (minus the appendices). The report was adopted at a meeting of the Advisory Committee on March 24, 1992. The complete report is available from the Commission's contractor for public record duplication, Downtown Copy Center, with offices in the FCC Headquarters, 1919 M Street, N.W., Room 246, Washington, D.C. Orders may be placed at (202) 452-1422. Members of the press may contact the Commission's Office of Public Affairs, 1919 M Street, N.W., Room 202, Washington, D.C. The public may view the full report at the Dockets Reference Room (Room 239) in the Commission's Headquarters during regular business hours.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

ET Docket No. 92-28

In the Matter of

Amendment of Section 2.106	PP-29
of the Commission's Rules to	PP-30
Allocate Spectrum to the	PP-31
Mobile-Satellite Service above	PP-32
1 GHz for Low-Earth Orbit	PP-33
Satellites -- Requests for	
Pioneer's Preference by	
Constellation, Ellipsat,	
Loral, Motorola, and TRW.	
Amendment of Parts 2, 22 and	RM-7927
25 of the Commission's Rules	PP-28
for an Allocation of Frequencies	
for a New Nationwide	
Hybrid Space/Ground Cellular	
Network for Personal Mobile	
Communications -- CELSAT	
Petition and Request for	
Pioneer's Preference.	

ORDER DENYING AN EXTENSION OF TIME FOR COMMENTS AND REPLIES

Adopted: March 25, 1992; Released: March 27, 1992

By the Office of Engineering and Technology:

1. On March 13, 1992, Loral Qualcomm Satellite Services, Inc. (Loral) requested that the time for filing comments in the above-captioned proceedings be extended from April 8, 1992 to May 8, 1992 and the time for filing reply comments be extended from April 23, 1992 to May 27, 1992.

2. In its request, Loral maintains that an extension of time is warranted for several reasons. First, that due to the relatively recent promulgation of the pioneer's preference rules and reconsideration order, more time is needed to fully understand and analyze these rules. Second, that public comment on license applications and rule making petitions on which the pioneer's preference requests rely resulted in complex and voluminous pleadings that need to be analyzed. Third, that key personnel who participated in the 1992 World Administrative Radio Conference (WARC-92) have returned only recently from the conference and require additional time to prepare comments. Finally, that the results of the WARC-92 have not been released.

3. With regard to the freshness of our Pioneer's Preference rules, the *Report and Order* adopting these rules was released on April 9, 1991.[1] Our recent reconsideration Order regarding these rules was released on February 26, 1992, and resulted in only minor procedural amendments and clarifications to rules that have been in effect since July 30, 1991. Comment already has been received on over 25 pioneer's preference requests that address other subjects without any apparent difficulty in understanding the rules. Therefore, we fail to discern any need for additional time to understand the pioneer's preference rules.

4. With regard to the pending rule making petitions in ET Docket No. 92-28,[2] these petitions were filed between June and November 1991 and at least a significant portion of any relevant analysis was performed and submitted in late 1991 in the form of comments to these petitions.[3] In addition, further detailed analyses of the same or similar issues recently have been submitted by parties responding to a public notice issued on October 24, 1991 accepting related license applications for public comment.[4] We recognize that the response comment period in the licensing matter recently was extended to March 27, 1992. However, the parties have 12 days after filing response comments in the licensing proceeding to submit comments in the above captioned proceedings. Since the issues in the licensing and rule making proceedings to a significant degree are analogous to the issues raised by their associated pioneer's preference requests, the established deadlines should be helpful to parties by requiring related comments by different but proximate dates. Thus, we conclude that the filing deadlines at issue are reasonable.

5. We come to the same conclusion with regard to the standard filing period established for the petition and pioneer's preference request of CELSAT Inc. (CELSAT). Indeed in its request for extension of time, Loral indicates that it has analyzed CELSAT's filings and decided to oppose CELSAT "for numerous reasons".[5] Having already analyzed these filings and determined its position, Loral has demonstrated that it does not require an extension of time in that proceeding.

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[1] *See Report and Order*, GEN Docket No. 90-217, 6 FCC Rcd 3488 (1991), *recon., Memorandum Opinion and Order*, released February 26, 1992, FCC No. 92-57.

[2] Petitions for rule making to establish a low-Earth orbit mobile-satellite service above 1 GHz were filed by Constellation, Inc. (Constellation), Ellipsat Corporation (Ellipsat), Loral Qualcomm Satellite Service (Loral), Motorola Satellite Communications, Inc. (Motorola), and TRW Inc. (TRW))

[3] *See* Public Notice, Report No. 1855, released August 13, 1991, regarding the Constellation and TRW petitions; Public Notice, Mimeo No. 14747 released September 13, 1991, extending the comment deadlines for the Constellation and TRW petitions and accepting the Ellipsat petition; and *Order Extending Time for Reply Comments*, DA number 91-1340, released October 25, 1991.

[4] *See* Public Notice, Report No. DS-1134, released October 24, 1991.

[5] Loral's request for extension of time, having addressed the merits of the CELSAT petition for rule making and associated request for pioneer's preference, is being placed in the RM-7927 and associated PP-28 public files.

6. Further, given that WARC-92 closed on March 3, 1992, any participant has more than thirty days after close of that Conference to submit comments in these proceedings. The Conference adopted an international allocation for LEO operations above 1 GHz, and most of the petitions for rule making and requests for pioneer's preference have been held in abeyance pending this event. The Commission now is in a position to ensure a complete record as a basis for its decisions and to act on these requests without further delay.[6]

7. The Commission does not routinely grant extensions of time.[7] Based upon the above facts and the totality of the circumstances, we find that the customary comment period established for comment in the above referenced proceedings is reasonable. We are not persuaded that further delays in these proceedings are justified by any of the reasons stated. Accordingly, IT IS ORDERED, that the request to extend the deadlines for filing comments and reply comments in these proceedings IS DENIED.

8. This action is taken pursuant to authority found in §§ 4 (i), 302, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154 (i), 302, and 303, and pursuant to §§ 0.31 and 0.241 of the Commission's Rules, 47 C.F.R. §§ 0.31 and 0.241. For further information contact Ray LaForge, Office of Engineering and Technology, (202) 653-8117.

FEDERAL COMMUNICATIONS COMMISSION

Thomas P. Stanley
Chief Engineer

[6] The Final Acts of the World Administrative Radio Conference (WARC-92) at Malaga-Torremolinos (including the addendum and corrigendum) were publicly available by March 17, 1992. They can be obtained from the Downtown Copy Center at (202) 452-1422.

[7] 47 C.F.R. § 1.46.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-350

In re Applications of

EMISION DE RADIO BALMESEDA, INC.	File No. BPH-870505MA
SAFE CARE, INC.	File No. BPH-870505MB
CHAMELEON BROADCASTING, INC.	File No. BPH-870506MH
DALE BROADCASTING, INC.	File No. BPH-870506MK
FIRST COAST RADIO, INC.	File No. BPH-870506MN
LEEANN KENDALL SCOPINICH	File No. BPH-870506MQ

For Construction Permit for a
New FM Station on Channel 293A
in Ponte Vedra Beach, Florida

MEMORANDUM OPINION AND ORDER

Adopted: April 1, 1992; Released: April 16, 1992

By the Review Board: BLUMENTHAL and GREENE. Board Member ESBENSEN absent.

1. The Board has before it the *Initial Decision*, 6 FCC Rcd (1991) (*I.D.*), of Administrative Law Judge John M. Frysiak (ALJ) in the above-captioned proceeding. It also has the exceptions and replies of the parties. Oral argument on the exceptions was held before the Board on December 6, 1991.

2. In the *I.D.*, the ALJ (1) disqualified Chameleon Broadcasting on a financial issue; (2) found that Emision De Radio Balmeseda was entitled to no ownership/management integration credit (it sought none) nor was Dale Broadcasting (integration pledge deemed contingent); and (3) found that Safe Care, First Coast Radio and Leeann Kendall Scopinich were all entitled to 100% integration credit. Of the latter three applicants, the ALJ held First Coast to be the superior comparative applicant under the *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393 (1965).

3. After close review of the record and the pleadings, the Board finds (for different reasons appertaining to each particular applicant) that none of the qualified applicants before us is entitled to any measure of integration credit, a potential the Board overtly signaled at oral argument. Tr. 1403.[1]

4. In light of thereof, we will request that the parties file supplemental briefs on the question of which applicant is to be preferred under the 1965 *Policy Statement*, in the absence of the award of integration credit to any of the competing applicants.[2]

5. ACCORDINGLY, IT IS ORDERED, That the parties ARE DIRECTED TO FILE supplemental briefs on the question described in paragraph 4 of this Order within twenty (20) days of the Order's release date; and that reply briefs, SHALL BE FILED no later than ten days after the filing of the supplemental briefs.

FEDERAL COMMUNICATIONS COMMISSION

Norman B. Blumenthal
Member, Review Board

FOOTNOTES

[1] Our reasons will be fully discussed in our ultimate *Decision* in this case; in view of our above determination, however, that final decision shall await the pleadings we have here requested of the parties.

Furthermore, and also to be explained in our ultimate *Decision*, the Board finds (1) no reason to disturb the ALJ's conclusions with respect to either Chameleon or Dale Broadcasting; and (2) that, in any event, neither First Coast nor Scopinich could receive the subject permit without facing basic qualifying issues as to their financial certifications.

[2] While this proceeding was under deliberation by the Board, the court issued its decision in *Bechtel v. FCC*, No. 91-1112 (D.C. Cir. Jan. 31, 1992), in which it remanded a comparative proceeding for the agency's explanation of whether, and why, integration should continue to be an evaluation factor. Because we could not anticipate the Commission's response to *Bechtel*, and inasmuch as it appeared to the Board that no party to the instant case should be awarded integration credit, we deferred acting in this case pending the Commission's response to *Bechtel*, on the possibility that the Commission might change its focus to other factors, on either an interim or permanent basis. Recently, the Commission has indicated its response to *Bechtel*, *see News Release*, DC-2072, Dkt. No. 92-52, released March 12, 1992 and *Order*, FCC 92I-015, released March 16, 1992 (*Anchor Broadcasting Limited Partnership*), but neither action would appear to help resolve the critical questions on which our instant case shall apparently hinge.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

National Exchange Carrier
Association, Inc.

Petition for Waiver of Equal Access
Balloting Requirements

ORDER

Adopted: April 6, 1992; Released: April 7, 1992

By the Chief, Common Carrier Bureau:

1. On February 26, 1992, the National Exchange Carrier Association, Inc. (NECA) filed a petition for waiver requesting that the Commission waive the 90-day and 50-day requirements for mailing of the initial and second equal access ballots as set forth in the *Allocation Order*.[1] The waivers are requested to enable SDCEA, Inc. (SDCEA) and 12 local exchange carriers (LECs) to conduct a consolidated ballot. NECA Petition at 1-2. NECA also requests a waiver of Section 61.58 of the Commission's Rules, 47 C.F.R. § 61.58, to file related tariff revisions on less than statutory notice. *Id.* at 5-6.

2. NECA argues that the balloting waiver is necessary to allow SDCEA and the LECs to conduct a consolidated ballot while converting the 76 affected end offices to equal access over a two-month period, beginning April 7, 1992 and ending June 9, 1992. NECA maintains that the balloting process is most efficiently and economically completed on a consolidated, system-wide basis. *Id.* at 3. It contends the consolidated ballot will permit SDCEA's interexchange carrier (IXC) customers to determine, at a single early date, the nature and size of their initial end user customer bases, and thereby enable the IXCs to make necessary plans and obtain the requisite facilities to carry the resulting interexchange traffic. NECA suggests that a consolidated ballot will also permit SDCEA to determine the identity and estimated traffic of IXC customers at the same early date and to make certain it has sufficient facilities in place to serve them. Finally, NECA asserts that a consolidated ballot will save SDCEA and the 12 LECs the time and expense of processing and mailing additional ballots to IXC customers and will minimize confusion among end users. *Id.* at 3-4.

3. NECA reports that SDCEA mailed equal access ballots to end users served by all 76 affected offices on January 6, 1992, 90 days prior to the initial conversion date of April 7, 1992. It mailed its second ballot to non-responding end users served by all 76 end offices on February 24, 1992, 50 days prior to April 7. Whereas this schedule complies with the Commission's 90-day and 50-day requirements with respect to end user customers of the initially converted end offices, NECA asserts that it results in customers of the remaining end offices receiving their initial ballot from 100 to 154 days prior to equal access conversion, and their second equal access ballot from 60 to 114 days prior to conversion. *Id.* at 4-5.

4. On March 9, 1992, American Telephone and Telegraph Company (AT&T) filed comments addressing the petition. AT&T states that while it does not object to SDCEA's requested waiver to conduct consolidated balloting, the waiver should be conditioned on an agreement by SDCEA and its participating LECs to provide an additional equal access notice to customers whose end offices are to be converted more than 30 days after equal access initially becomes available. AT&T Comments at 3. AT&T asserts that this additional notification will reduce customer confusion caused by SDCEA's staggered conversion schedule and will also minimize the number of inquiries by customers to IXCs regarding their presubscription status during the conversion period. These reasons, says AT&T, compelled other centralized equal access providers to agree to the additional notification requirement when the Commission permitted them to conduct consolidated balloting,[2] and NECA has failed to demonstrate why SDCEA cannot now follow this same procedure. *Id.* at 3-4.

5. NECA replies[3] that it would be unreasonable and unjustified for its request for a consolidated ballot to be conditioned on additional notification. It claims that end users will not be harmed by a consolidated ballot because the staggered end office conversion will take place over a short period of time. NECA Reply at 2. It maintains that SDCEA's conversion schedule spans only 64 days while the centralized equal access providers cited by AT&T who were required to provide further notification maintained lengthy conversion schedules spanning periods of six months and one year. *Id.* at 3. These providers agreed to additional notification to end users where there were more than 30 days between the initial centralized equal access conversion and the equal access availability. NECA argues that it is difficult to ascertain how a maximum of 34 days' delay during SDCEA's conversions will contribute significantly to customer confusion. This short time frame, says NECA, does not warrant additional notification when balanced against the cost of such further notice. *Id.*

6. The Common Carrier Bureau has reviewed NECA's petition for waiver, AT&T's comments, and NECA's reply to the comments. Based on SDCEA's short equal access conversion schedule, we believe that a consolidated ballot provides sufficient notice and will minimize confusion among end users. We therefore conclude that NECA has shown good cause[4] for waiver of the 90-day and 50-day requirements for mailing equal access ballots. We also

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[1] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 FCC 2d 911 (1985) (*Allocation Order*), *recon. denied*, 102 FCC 2d 503 (1985); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 FCC 2d 935 (1985) (*Waiver Order*).

[2] *See* National Exchange Carrier Assoc., Petition for Waiver of Equal Access Balloting Requirements, 4 FCC Rcd 3949 (Com.Car.Bur. 1989); National Exchange Carrier Assoc., Petition for Waiver of Equal Access Balloting Requirements, 6 FCC Rcd 4789 (Com.Car.Bur. 1991).

[3] NECA Reply, filed Mar. 19, 1992.

[4] The rules may be waived if there is "good cause" to do so. *See* Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3. Good cause exists if the application of the rule to the particular

grant a waiver of Section 61.58 of the Commission's Rules, 47 C.F.R. § 61.58, to allow NECA to file revisions to its access tariff on less than statutory notice.

7. Accordingly, IT IS ORDERED that the petition for waiver filed by the National Exchange Carrier Association, Inc., IS GRANTED.

8. IT IS FURTHER ORDERED that for the purpose of filing tariff revisions to be effective on not less than one day's notice, Section 61.58 of the Commission's Rules, 47 C.F.R. § 61.58, is waived and Special Permission No. 92-228 is assigned.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

facts produces results that were not anticipated when the rule was adopted, those results impose undue hardship upon particular persons, and a decision to grant the waiver does not conflict with the purposes and policies of the relevant rules. *See also* Northeast Cellular Telephone Company, L.P. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990); WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: April 8, 1992

COMMISSION REQUESTS COMMENTS IN WESTERN UNION REMAND PROCEEDING

ACTION IN DOCKET CASE: CC DOCKET NO. 78-97

The Commission has been directed by the United States Court of Appeals for the D.C. Circuit[1] to review conclusions reached by the Commission[2] using an analysis based on Section 222 of the Communications Act, 47 U.S.C. § 222. In the *Reimbursement Order*, the Commission determined that the Western Union Telegraph Co. (Western Union) was entitled to recover the full public rate for outbound telex and TWX services from certain interconnected carrier parties, or ICPs,[3] for the period from January 1978 to August 1979, during which neither a carrier agreement nor a Commission prescription existed that established telex and TWX rates among the parties. The Commission awarded retrospective relief, including interest, to Western Union.

The Commission will consider: (1) Whether the public rates that the Commission allowed to become effective for Western Union's telex and TWX facilities were appropriately applied to the ICPs during the January 1978 - August 1979 hiatus period; and (2) whether interest should be assessed on any amounts the ICPs may owe Western Union because of their failure to pay the public rates.

We direct the parties to this proceeding to explain how they believe the Commission should address the remanded issues. Specifically, parties should state the principles that should govern the division of revenues produced by telex and TWX service during the hiatus period. If the parties feel that they must supply additional information in order for the Commission to address the remanded issues, they must explain how this information was derived and include a detailed explanation of the methodology they used, including any accounting or statistical methods they employ. Parties shall attach full copies of any relevant earlier pleadings from this proceeding to their comments, and shall cite to those pleadings wherever appropriate.

Comments should be filed no later than **May 8, 1992.** Replies should be filed no later than **May 22, 1992.** An original and four copies of all comments and replies must be filed with the Secretary of the Commission in accordance with Section 1.51(c) of the Commission's Rules. Parties must also furnish one copy of their comments and replies to Downtown Copy Center, the Commission's duplicating contractor, at its office in Room 246, 1919 M Street, N.W., Washington D.C. 20554, and six copies to the Chief, Tariff Division, Room 518, 1919 M. Street, N.W., Washington, D.C. 20554. For further information contact Debra Sabourin, Common Carrier Bureau, Tariff Division at (202) 632-6917.

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[1] TRT Telecommunications Corp. v. FCC, 857 F.2d 1535 (D.C. Cir. 1988) (*Remand Order*).

[2] Western Union Telegraph Co., CC Docket No. 78-97, Phase I, 102 FCC 2d 485 (1985) (*Reimbursement Order*).

[3] The ICPs were ITT World Communications, Inc., TRT Telecommunications Corporation, Western Union International, Inc., RCA Global Communications, Inc., and FTC Communications, Inc.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T Communications Transmittal No. 3965
Tariff Nos. 4 and 10

ORDER

Adopted: April 8, 1992; Released: April 8, 1992

By the Chief, Common Carrier Bureau:

1. On March 26, 1992, AT&T Communications (AT&T) filed the captioned tariff revisions which are scheduled to become effective April 9, 1992 on 14 days' notice. This filing proposes restructured rates for ACCUNET T45 Reserved Service.

2. On April 2, 1992, Williams Telecommunications Group, Inc. (WilTel) filed a petition to reject Transmittal No. 3965.

3. The Common Carrier Bureau has reviewed AT&T Communications Transmittal No. 3965 and WilTel's petition. We conclude that no compelling argument has been presented that the tariff is so patently unlawful as to warrant rejection, and that an investigation is not warranted at this time.

4. Accordingly, IT IS ORDERED that the petition to reject AT&T Communications Transmittal No. 3965, filed by Williams Telecommunications Group, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 85-355

In re Applications of

TRI-STATE BROADCASTING COMPANY, INC. — File Nos. BR-830609UH, BRH-830609WZ

For Renewal of License of
Stations KUKQ(AM) and KUPD-FM

JACK F. GRIMM, JACKIE B. GRIMM and RUTH G. CLIFFORD d/b/a GRIMM & CLIFFORD — File No. BP-830831AB, BPH-830831AI

For New AM Station and
New FM Station
Tempe, Arizona

ORDER

Adopted: April 6, 1992; Released: April 7, 1992

1. January 10, 1992, Tri-State Broadcasting Company, Inc. (Tri-State) and Grimm & Clifford (G&C) (hereinafter, collectively, Petitioners) filed a joint request for approval of a settlement agreement and G&C filed a petition for leave to amend. The Petitioners filed supplements to the joint request for approval on February 28 and March 11, and G&C filed a supplement to the amendment petition on the latter date. The Mass Media Bureau filed comments in support of these motions on March 17.

2. Petitioners propose to settle this case, which has been on appeal[1] to the United States Court of Appeals for the D.C. Ciruit following denial of the renewal applications of Tri-State. Pursuant to the settlement agreement, Tri-State would forego its appeal rights and the contested grant of construction permits to G&C would therefore become final. G&C would amend its application to substitute a new organization, G&C Broadcasting, Inc. (GCB), to be owned 51% by G&C and 49% by Robert Fish, who is not a party. GCB would purchase the assets associated with Tri- State's stations, and Tri-State and its principals would agree not to compete with GCB in the Phoenix ADI for a period of five years.

3. G&C's petition for Leave to Amend seeks to implement the settlement agreement by substituting GCB for G&C. The agreement between G&C and Fish provides Fish an option to acquire G&C's interest after one year of broadcast operations for a total payment of $1,650,000. G&C would have a reciprocal option to purchase Fish's interest for 49% of the sum of (i) the excess of ten times the stations' cash flow for the first year of GCB's broadcast operations over the principal amount of GCB's debt for borrowed money, and (ii) the excess, if any, of GCB's current assets over current liabilities. GBC would hire G&C principal Jack Grimm as a consultant for seven years at a specified salary.

4. The Joint Request and supporting materials satisfy the requirements of Section 73.3525 of the Commission's Rules and Section 311(d) of the Communications Act of 1934, as amended. The proposed settlement would bring this protracted litigation to a speedy conclusion and put the stations in the hands of a firm whose basic qualifications are not in question. Principals of each of the Petitioners have submitted Declarations that their applications were not filed for the purpose of reaching or carrying out a settlement agreement. Furthermore, the non-competition agreement between Tri-State and GCB is consistent with the public interest because it is sufficiently limited in geographic scope and duration. *See Intercontinental Radio, Inc.*, 62 RR 2d 1565, 1567 ¶ 7 (1985).

5. The amount of consideration to be paid to Tri-State is consistent with applicable requirements. As G&C points out, settlement of this proceeding is governed by rules in effect before 1989 that set no limit on the permissible amounts of settlement payments. *Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants and Other Participants to the Comparative Renewal Process*, 4 FCC Rcd 4780, 4788 (1989). The instant settlement would not be barred by the current rule restrictions on settlement payments, in any case, because it involves payment to an incumbent licensee. 4 FCC Rcd at 4784. Should principals of Tri-State seek to become Commission licensees in the future, their qualifications would be subject to evaluation on the basis of the adverse findings with respect to Tri-State's qualifications in this case. See *Washington's Christian Television Outreach, Inc.*, 59 RR 2d 787, 793 ¶ 15 (1985).

6. ACCORDINGLY, IT IS ORDERED, pursuant to 47 C.F.R. §0.251(f)(11), that the joint request for approval of settlement agreement filed on January 10, 1992, as supplemented February 28, 1992 and March 11, 1992, IS GRANTED and the attached settlement agreement IS APPROVED.

7. IT IS FURTHER ORDERED, That the petition for leave to amend filed on January 10, 1992 and supplemented on March 11 by Jack F. Grimm, Jackie B. Grimm, and Ruth G. Clifford d/b/a/ Grimm & Clifford IS GRANTED and the attached amendment IS ACCEPTED.

8. IT IS FURTHER ORDERED, That the amended applications of G&C Broadcasting for new AM & FM stations at Tempe, Arizona (File No. BP-830831AB and File No. BPH-830831AI) ARE GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Robert L. Pettit
General Counsel

By John I. Riffer
Associate General Counsel

FOOTNOTE

[1] On January 23, 1992, pursuant to joint motion, the case was remanded for consideration of the settlement proposal.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

CC Docket No. 92-76

Released: April 16, 1992

FCC ASKS FOR COMMENTS REGARDING THE ESTABLISHMENT OF AN ADVISORY COMMITTEE TO NEGOTIATE PROPOSED REGULATIONS

1. The Commission is considering establishing an Advisory Committee to negotiate regulations defining the technical and service rules appropriate to the provision of data messaging and position determination services using low-Earth orbit (LEO) satellites operating in the 137-138, 148-150.05, 399.9-400.05 and 400.15-401 MHz frequency bands ("small" LEOs). In a *Notice of Proposed Rulemaking*, 6 FCC Rcd 5932 (1991) (allocation NPRM) we proposed to allocate these bands to a LEO satellite service. The negotiations contemplated by this *Notice* will help develop regulations designed to facilitate the shared use by the maximum number of service providers in the spectrum. The rules would cover all qualifications for a Commission license to provide small LEO services. Any negotiating committee would be created under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and the Negotiated Rulemaking Act of 1990 (NRA), Pub. L. 101-648, November 28, 1990, and would consist of representatives of the interests that will be significantly affected by the outcome of these rules. *See also Initial Policy Statement and Order*, 6 FCC Rcd 5669 (1991).

I. REGULATORY NEGOTIATION

2. Regulatory negotiation is a technique through which the Commission hopes to develop better regulations that may be implemented in a less adversarial setting. Negotiations are conducted through an Advisory Committee chartered under FACA. The goal of the Committee is to reach consensus on the language or issues involved in a rule. If consensus is reached, it is used as the basis of the Commission's proposal. If consensus is not reached, majority and minority input may be used by the Commission in ultimately proposing regulations. All procedural requirements of the Administrative Procedure Act (APA) and other applicable statutes continue to apply.

3. When making a determination regarding the suitability of a candidate for the negotiated rulemaking process, the Commission must consider whether:

(a) there is a need for the rule,

(b) there are a limited number of identifiable interests that will be significantly affected by the rule,

(c) there is a reasonable likelihood that a committee can be convened with a balanced representation of persons who:

(1) can adequately represent the identifiable interests and

(2) are willing to negotiate in good faith to reach a consensus on the proposed rules,

(d) there is a reasonable likelihood that a committee will reach a consensus on the proposed rules within a fixed period of time,

(e) the negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of final rules,

(f) the agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee, and

(g) the agency will, to the maximum extent possible consistent with the legal obligations of the agency, use the consensus of the committee with respect to the proposed rules as the basis for the rules proposed by the agency for notice and comment. NRA §3, 5 U.S.C. §583(a).

II. SUBJECT AND SCOPE OF RULE PROPOSED FOR NEGOTIATION

4. The proposed rulemaking process is intended to develop the rules that will govern the provision of mobile- and fixed-LEO satellite services operating in the frequency bands below 1 GHz. These regulations are necessary to establish a new domestic satellite service in accordance with our allocation NPRM, *supra*, to define and regulate this service in such a way as to maximize use of these frequency bands and to protect existing users of these bands from harmful interference.

5. The Commission is here proposing that the service and technical rules governing the provision of small LEO services be developed through negotiation. We believe that such rules are appropriate for negotiated development. The Commission's staff has made preliminary inquiries of a number of potential parties and representatives of identified interests to determine if the regulations satisfy the applicable selection criteria for negotiation. On the basis of these inquiries, the Commission believes that the regulations meet the selection criteria and that the negotiations can be successful. Affected interests are relatively small in number, and our initial contacts indicate that an appropriate balance and mix of groups will be willing to participate in good faith. The Commission also believes that a Committee comprised of representatives of these groups could reach a consensus in a reasonable amount of time so as not to unduly delay the issuance of a notice of proposed rulemaking or a final order. The Commission has adequate resources to devote to the negotiations, and it will use the consensus of the Committee as the basis for its rules to the extent possible.

6. The Commission has identified the following issues, among others, that will be addressed in developing the rules for small LEO services:

(a) whether small LEO services should be offered on a common carrier basis,

(b) which modulation method should be employed by the parties in order to co-exist with other satellite and terrestrial systems in the band,

(c) whether separate rules should be established to govern the provision of non-profit, as opposed to commercial, small LEO services,

(d) the extent to which the spectrum may be shared by future applicants,

(e) whether coordination disputes between LEO uplinks and terrestrial services should be resolved in an open forum or through the Frequency Assignment Subcommittee of the Interagency Radio Advisory Committee, and

(f) whether, and to what extent, the other proposals set forth in our allocation NPRM should be implemented.

All proposals must comply with International Telecommunications Union treaty obligations, and conform to any operating restrictions ultimately negotiated between the National Telecommunications and Information Administration and the Commission with regard to the final spectrum allocation.

III. POTENTIAL INTERESTS AND PARTICIPANTS

7. The Commission has identified the following interests as those likely to be significantly affected by the small LEO service rules:

-all applicants to provide small LEO services in the affected bands

-all existing users of these frequencies for terrestrial or space services

8. The following have initially indicated their willingness to participate in the negotiation Committee, if the Commission decides to proceed with its implementation: Volunteers in Technical Assistance, Albert Halprin for Orbital Communications Corporation, Alan Renshaw and/or Raul R. Rodriguez for STARSYS, Inc., and the Domestic Facilities Division, Common Carrier Bureau, for the Federal Communications Commission.

IV. FORMATION OF THE NEGOTIATING COMMITTEE

A. Procedure for Establishing an Advisory Committee

9. As a general rule, an agency of the Federal Government is required to comply with the requirements of FACA when it establishes or uses a group which includes members of the public as a source of advice. Under FACA, an Advisory Committee is established only after both consultation with the General Services Administration (GSA) and filing of a charter. The Commission will prepare a charter and initiate the requisite consultation process prior to formation of the Committee and the commencement of negotiations.

B. Participants

10. The number of participants in the group is estimated to be about 10 and should not exceed 25 participants. A number larger than this could make it difficult to conduct efficient negotiations. We do not believe that each potentially affected organization or individual must necessarily have its own representative. However, we firmly believe that each interest must be adequately represented. We must be satisfied, moreover, that the group as a whole reflects a proper balance and mix of interests.

11. Persons who will be significantly affected by the proposed rules and who believe that their interests will not be adequately represented by any person specified in paragraph 8, *supra*, may apply for, or nominate another person for, membership on the negotiated rulemaking Committee to represent such interests with respect to the proposed rules. Each application or nomination shall include:

(a) the name of the applicant or nominee and a description of the interests such person will represent,

(b) evidence that the applicant or nominee is authorized to represent parties related to the interests the person proposes to represent,

(c) a written committment that the applicant or nominee shall actively participate in good faith in the development of the rules under consideration, and

(d) the reasons that the persons specified in this *Notice* do not adequately represent the interests of the person submitting the application or nomination.

12. If, in response to this *Notice*, any additional individuals or interests request membership or representation in the negotiating group, the Commission will determine whether that individual or representative should be added to the group. The Commission will make that decision based on whether the individual or interest would be substantially affected by the rule, and is already adequately represented in the negotiating group.

C. Agenda

13. If the Commission ultimately decides to establish a negotiating committee and its charter is approved, it is expected that the Committee's first meeting will take place in September 1992, at 2000 L Street, N.W., Washington, D.C., at a room, date and time that will be announced. At this initial meeting, the Committee will complete action on all procedural matters and establish a target date for submission of its recommendations. We expect that this target date will be no later than December 31, 1992. We anticipate publication of a notice of proposed rulemaking not later than March 1993.

V. NEGOTIATION PROCEDURES

14. The following procedures and guidelines will apply to the Committee, if formed, unless they are modified as a result of comments received on this *Notice* or during the negotiation process.

A. Facilitator

15. The Commission will nominate a person to serve as a neutral facilitator for the negotiations of the Committee, subject to the approval of the Committee by consensus. The facilitator will not be involved with the substantive development or enforcement of the regulations. The facilitator's role is to:

--chair negotiating sessions;

--help the negotiation process run smoothly;

--help participants define and reach consensus; and

--manage the keeping of records and minutes.

B. Good Faith Negotiation

16. Since participants must be willing to negotiate in good faith and be authorized to do so, each organization must designate a qualified individual(s) to represent its interest. This applies to the Commission as well, and Thomas S. Tycz, Deputy Chief, Domestic Facilities Division, will be the Commission's representative.

C. Meetings and Compensation

17. Meetings will be held in the Washington area at the convenience of the Committee. The Commission, if requested, will provide the facilities needed for the conduct of the meetings, and will provide any necessary technical support. Private sector members of the Committee will serve without government compensation or reimbursement of expenses.

D. Committee Procedures

18. Under the general guidance and direction of the facilitator, and subject to any applicable legal requirements, the members will establish the procedures for Committee meetings that they consider most appropriate.

E. Consensus

19. The goal of the Committee is consensus. We expect the participants to fashion their own working definition of this term. In the event the Committee is unable to reach consensus, the Commission will proceed to develop its own approach. Parties to the negotiation may withdraw at any time. If this happens, the remaining Committee members and the Commission will evaluate whether the Committee should continue.

F. Record of Meetings

20. In accordance with FACA's requirements, the Committee will keep a record of all Committee meetings. This record will be placed in the public docket for this rulemaking. The Commission will announce Committee meetings in the Federal Register. Such meetings will be open to the public.

VI. CONCLUSION

21. The Commission requests public comment, within 30 days of the issuance of this *Notice*, on whether: (1) it should establish a Federal Advisory Committee, (2) it has properly identified interests that are significantly affected by the key issues listed above, (3) the proposed Committee membership reflects a balanced representation of these interests, and (4) regulatory negotiation is appropriate for this rulemaking.

22. Pursuant to the applicable procedures set forth in Section 4(c) of the Negotiated Rulemaking Act of 1990, 5 U.S.C. §584(c), interested parties may file comments and applications for Committee membership on or before [thirty days from release date]. You should send your comments and/or applications to the Office of the Secretary, CC Docket No. 92-76, Federal Communications Commission, Washington, D.C. 20554. Comments and applications will be available for public inspection during regular business hours in the Dockets Reference Room of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

23. For further information pertaining to the establishment of the negotiation committee and associated matters, contact Kristi L. Kendall, Satellite Radio Branch, 2025 M Street, N.W., Washington, D.C. 20554, (202) 634-7058.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Micronet, Inc. File No. I-T-C-92-089-TC

Application for authority pursuant to
Section 214 of the Communications
Act of 1934, as amended, for transfer
of control of channels of communication
between the United States and Intelsat
Atlantic Ocean region satellites
for the provision of international
television services

Micronet, Inc. File No. CSG-92-044-TC

Application for authority pursuant to
Title III of the Communications
Act of 1934, as amended, for transfer
of control of international fixed
satellite station KA-307,
Glenwood, New Jersey

MEMORANDUM, OPINION, AND ORDER

Adopted: April 8, 1992; Released: April 16, 1992

By the Chief, International Facilities Division:

1. On January 29, 1992, Micronet, Inc. (Micronet) filed the above-captioned applications pursuant to Section 214 and Title III of the Communications Act of 1934, as amended, 47 U.S.C. §§ 214 and 301 *et seq.*, and Section 63.01 of the Commission's Rules, 47 C.F.R. § 63.01, requesting authority to transfer control of Micronet's Section 214 authorization and international fixed satellite station KA-307 from H.F. Lenfest to H.F. Lenfest and Liberty Cable, Inc. (Liberty). The applications were put on public notice on February 5, 1992, and no comments were received.

2. Micronet is a Delaware corporation that has authority to provide international television services via Atlantic Ocean Region Satellites.[1] Micronet is a wholly owned subsidiary of Suburban Cable TV Co. Inc. (SCTV). SCTV is a wholly owned subsidiary of Lenfest Communications, Inc. (LCI), a Delaware holding company. Micronet operates under the regulatory requirements established for non-dominant international carriers in *International Competitive Carrier Policies*.[2]

3. H.F. Lenfest is an individual. Liberty is a Wyoming corporation ultimately owned by Liberty Media Corporation (LMC) which through its subsidiaries and affiliates holds a number of licenses in the Cable Television Relay Service, Business Radio Service and Common Carrier Service. It is also acquiring an interest in the Broadcast Service. The application states that no officer and no more than one-fourth of the directors of LMC are aliens, and that no more than one-fourth of the capital stock is owned of record or voted by aliens or their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign government. Almost 75 percent of LMC's stock is voted by two individuals, John C. Malone and Bob Magness.

4. The application states that all of the Class A shares of LCI are owned by H.F. Lenfest and his children and voted by Mr. Lenfest. The Class A shares amount to 95.6 percent of the total voting power of all classes of shares. The remaining voting power is held by Liberty as Class B shares. H.F. Lenfest has agreed to sell to Liberty an amount of LCI stock that will increase Liberty's voting power in LCI to 50 percent. Thus, Mr. Lenfest will be relinquishing positive voting control over LCI and Micronet, and will instead share negative voting control with Liberty. According to the application, Micronet will continue to remain legally, financially and technically qualified to provide international telecommunications services. It will continue to operate the earth station by which the international television services are transmitted. Its services will not be eliminated or interrupted and no customers will be adversely affected. Micronet will continue to maintain an effective international tariff at the Commission.

5. In view of the foregoing, we conclude that the transfer of control of Micronet's Section 214 authorization and international fixed satellite station KA-307 from H.F. Lenfest to H.F. Lenfest and Liberty Cable, Inc., will not adversely affect the public interest.

6. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 214 of the Communicatiions Act of 1934, as amended, 47 U.S.C. § 214, and Section 63.01 of the Commission's Rules, 47 C.F.R. § 63.01, the application of Micronet, Inc., File No. I-T-C-92-089-TC, IS GRANTED and we consent to the transfer of control of Micronet's Section 214 authorization originally granted in File No. I-T-C-91-155 (*see* n.1) from H.F. Lenfest to H.F. Lenfest and Liberty Cable, Inc.

7. IT IS FURTHER ORDERED that, pursuant to Title III of the Communications Act of 1934, as amended, 47 U.S.C. § 301 *et seq.*, the application of Micronet, Inc., File No. CSG-92-044-TC, IS GRANTED and we consent to the transfer of control of international fixed satellite station KA-307.

8. IT IS FURTHER ORDERED that Micronet must continue to maintain tariffs pursuant to Section 203 of the Communications Act of 1934, as amended, 47 U.S.C. §203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this order.

9. IT IS FURTHER ORDERED that Micronet must file annual reports of overseas telecommunications traffic as required by Section 43.61 of the Commission's Rules, 47 C.F.R. § 43.61.

10. IT IS FURTHER ORDERED that Micronet shall file semi-annual circuit reports pursuant to Section 63.10(b) of the Commission's Rules, 47 C.F.R. Section 63.10(b).

11. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] *See* Micronet, Inc., File No. I-T-C-91-155, 6 FCC Rcd 5039 (1991). Micronet's original application was inadvertently given two file numbers, I-T-C-91-155 and I-T-C-91-166, and file number I-T-C-91-166 was subsequently deleted. *See* Public Notice dated August 21, 1991, Report No. I-6605.

[2] *International Competitive Carrier Policies*, 102 FCC 2d 812 (1985), *recon. denied*, 60 RR 2d 1435 (1986) (hereinafter *International Competitive Carrier Policies*).

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

JAYBAR COMMUNICATIONS — File No. 01885-CL-MP-91

For modification of facilities in
the Domestic Public Cellular
Telecommunications Radio Service
on Frequency Block A, in Market 323
Arizona 6 - Graham

In re Application of

DATA CELLULAR SYSTEMS — File No. 01239-CL-MP-91

For modification of facilities in
the Domestic Public Cellular
Telecommunications Radio Service
on Frequency Block A, in Market 345,
California 10 - Sierra

In re Application of

ALPHA CELLULAR — File No. 02370-CL-MP-92

For modification of facilities in
the Domestic Public Cellular
Telecommunications Radio Service
on Frequency Block A, in Market 410
Indiana 8 - Brown

MEMORANDUM OPINION AND ORDER

Adopted: April 8, 1992; Released: April 16, 1992

By the Deputy Chief, Common Carrier Bureau:

I. INTRODUCTION

1. Jaybar Communications (Jaybar), Data Cellular Systems (Data) and Alpha Cellular (Alpha) filed FCC Form 401 applications to modify their nonwireline cellular systems serving the Graham, Arizona 6 Rural Service Area (RSA) (market number 323A) (Station KNKN251),[1] the Sierra, California 10 RSA (market number 345A) (Station KNKN250)[2] and the Brown, Indiana 8 RSA (market number 410) (Station KNKN340), respectively.[3] The Mobile Services Division (MSD) granted their applications "conditioned upon any action that may be taken and/or findings that are made by the Commission in"[4] *Algreg Cellular Engineering*, CC Docket Number 91-142, 6 FCC Rcd 2921 (Com. Car. Bur. 1991) (Risk Sharing Proceeding or Designation Order).[5] Thomas Domencich and the Committee for a Fair Lottery (jointly, CFL) filed a petition for reconsideration requesting modification of the grant. Data filed an opposition. For the reasons set forth below, we deny Data's opposition and grant CFL's petition.

II. DISCUSSION

2. CFL contends that because Jaybar, Data and Alpha are allowed to offer mitigating evidence in the Risk Sharing Proceeding the grant of their applications "should place explicit limits upon [their] future efforts . . . to use the fact of their operations to further entrench their positions and mitigate their involvement in the illegal [risk sharing] agreement." *See* CFL petition at 4. CFL requests that the grant be modified to state that the applications are granted "without prejudice to any action the Commission may take in . . . [the Risk Sharing Proceeding and] subject to the express condition that service to the public over the modified station facility shall not be considered a mitigating factor . . . ." *See* CFL petition at 2.[6]

3. In *Jaybar*, the MSD indicated that its grant of Jaybar, Data and Alpha's applications for modification would not affect the outcome of the Risk Sharing Proceeding.[7] While we are not persuaded that the existing language has misled any party as to the intention of the MSD's grant, we believe the public interest will be served by modifying the grant to better explain the intended limitation. Accordingly, we will specify that the applications are granted (1) without prejudice to any action the Commission may take in the Risk Sharing Proceeding and (2) subject to the express condition that service to the public over the modified facilities shall not be considered a mitigating factor in the Risk Sharing Proceeding.

III. ORDERING PARAGRAPHS

4. Accordingly, IT IS ORDERED that the petition for reconsideration filed by The Committee for a Fair Lottery and Thomas Domencich IS GRANTED TO THE EXTENT STATED HEREIN.

5. IT IS FURTHER ORDERED that the conditional grant of the applications of Jaybar Communications, Data Cellular Systems and Alpha Cellular IS MODIFIED to add that the applications are granted (1) without prejudice to any action the Commission may take in the Risk Sharing Proceeding and (2) subject to the express condition that service to the public over the modified facilities shall not be considered a mitigating factor in the Risk Sharing Proceeding.

6. This Order is issued under Section 0.291 of the rules and is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Gerald P. Vaughan
Deputy Chief, Common Carrier Bureau

FOOTNOTES

[1] *See* Public Notice, Report No. CL-92-5 at 4 (released October 9, 1991); *see also* Jaybar application, engineering statement at 1 (Jaybar proposes to modify an existing cell and add two cells).

[2] *See* Public Notice, Report No. CL-91-200 (released August 30, 1991); *see also* Data application, Exhibit 1 ("Data proposes to construct one additional cell site and to modify the Cellular Geographic Service Area (CGSA)").

[3] *See* Public Notice, Report No. CL-92-17 (released November 12, 1991); *see also* Alpha application, engineering statement at 2 (Alpha proposes to modify two existing cells and add six cells).

[4] *See* Jaybar Communications, 7 FCC Rcd 672 (Mob. Serv. Div. 1992) (*Jaybar*).

[5] In its Designation Order, the Common Carrier Bureau, *inter alia*, ordered Jaybar, Data and Alpha to show cause why their authorizations for market numbers 323A, 345A and 410A, respectively, should not be revoked under Section 312(a) of the Communications Act of 1934, as amended, for violation of Sections 22.33, 22.921 and 22.922 of the Commission's rules. *See* Designation Order at 2928. Sections 22.33, 22.921 and 22.922 prohibit partial settlement agreements among nonwireline RSA applicants, multiple ownership interests in competing nonwireline RSA applications and the transfer of interests in pending applications, respectively.

[6] Data contends that CFL lacks standing to file its petition. Section 1.106(b)(1) of the rules provides that "any . . . person whose interests are adversely affected by any action taken by the . . . designated authority, may file a petition requesting reconsideration of the action taken." CFL's interest as a party to the Risk Sharing Proceeding requesting revocation of Jaybar, Data and Alpha's authorizations is directly affected by grants modifying those authorizations. Therefore, we reject Data's contention and find that CFL has standing to file its petition. Also, Data asserts that "CFL has stated no basis for reconsideration." *See* Data opposition at 2. Section 1.106(d)(1) of the rules requires that a petition for reconsideration "state with particularity the respects in which petitioner believes the action taken by the . . . designated authority should be changed . . . ." CFL's petition complies fully with this requirement. *See supra* para. 2. Therefore, we reject Data's assertion.

[7] *See* Jaybar at 672 (in finding the grant to be in the public interest, the MSD determined that the grant "would not prejudice the outcome of the risk sharing proceeding").

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-512

In the Matter of

Amendment of Section 73.202(b), RM-6973
Table of Allotments,
FM Broadcast Stations.
(Fairfield and Norwood, Ohio)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: April 2, 1992; Released: April 16, 1992

By the Acting Chief, Allocations Branch:

1. At the request of WLLT, Inc. ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making* (*"Notice"*), 4 FCC Rcd 8174 (1989), proposing the reallotment of Channel 235B from Fairfield, Ohio, to Norwood, Ohio, and the modification of the license for Station WOFX accordingly. Petitioner filed comments reiterating its intention to apply for Channel 235B, if reallotted to Norwood. Great American Television and Radio Company, Inc. ("Great American"), and Jacor Communications, Inc. ("Jacor"), also filed comments. Petitioner filed reply comments.[1]

2. Great American, licensee of Stations WKRC(AM) and WKRQ(FM), Cincinnati, Ohio, and Jacor, licensee of Stations WLW(AM) and WEBN(FM), Cincinnati, oppose the reallotment. Great American and Jacor note that Fairfield currently receives local aural broadcast transmission service from daytime-only Station WCNW(AM) and FM Station WOFX. Both parties argue that the reallotment of Channel 235B to Norwood would be contrary to the Commission's rule permitting stations to change their community of license because it would deprive Fairfield of its only local nighttime aural transmission service.[2] Jacor submits that the Commission places a priority on the provision of fulltime service and thus contends that a grant of petitioner's proposal would result in an unforeseen and unintended extension of the change of community policy.

3. Both Great American and Jacor state that Norwood is a suburb of, and completely surrounded by, Cincinnati, which has local fulltime commercial aural service from fourteen fulltime stations. Therefore, they argue that Norwood is already well served. In addition, they state that Norwood's population has decreased from 30,420 in 1970 to a present population of only 25,200 persons.[3]

4. Petitioner, in reply comments, argues that Great American and Jacor incorrectly interpret the Commission's *Change of Community R&O*. While the Commission has stated that a petitioner may not deprive a community of its only local transmission service, no distinction was made between fulltime and daytime-only services. Furthermore, petitioner notes that this proposal involves no change in transmitter site and, therefore, no change in reception service to Fairfield will result. Petitioner points out that Fairfield and Norwood are located only nine miles apart.[4]

5. Petitioner also disputes the population difference cited by Jacor, stating that the 1980 U.S. Census attributes Norwood with a population of 26,342 persons and Fairfield with 30,777 persons. Further, it states that the U.S. Census lists both communities as "incorporated cities" with no reference to any possible status of either as being a "suburb" or "independent" communities. Finally, petitioner submits a letter from Norwood's Mayor, Joseph E. Sanker ("Sanker"), supporting the reallotment. According to Sanker, Norwood presently has no "effective public communication media" since its only community newspaper, the *Norwood Enterprise Press*, ceased publication in 1989. Sanker claims that satisfactory coverage of the community's needs and problems are not addressed by the stations within the greater Cincinnati area.

DISCUSSION

6. *First local transmission service preference.* As an initial matter, we note that the *Notice* in this proceeding was issued, and comments solicited, before the Commission adopted the *Community of License MO&O*. In that document, the Commission stated that in the event a petitioner sought to change the community of license of a station from a community outside of an Urbanized Area to a community within an Urbanized Area, we would question whether the proposed community is entitled to a first local service preference, or whether the proposed community should be credited with all of the aural services authorized to the communities within the Urbanized Area. The Commission also stated that it would examine such proposals pursuant to the factors enumerated in *RKO General (KFRC)* (*"KFRC"*), 5 FCC Rcd 3222 (1990), to determine if the community was entitled to a first local service preference. *See Community of License MO&O*, 5 FCC Rcd at 7097. In some cases in which a petition requesting a change in community was filed prior to the

[1] In addition, Robert J. Wolpert, Jr., Mayor of the City of Fairfield, filed comments opposing the change in community. He subsequently withdrew his opposition in reply comments. Accordingly, his comments will not be considered.

[2] The parties cite *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989) (*"Community of License R&O"*), *recon. granted in part*, 5 FCC Rcd 7094 (1990) (*"Community of License MO&O"*).

[3] Jacor attributes Fairfield with a population of 93,000 persons, but offers no basis for this estimate.

[4] In addition, petitioner refers to arguments that counsel for Jacor makes in another proceeding seeking a comparable change of community. *See Notice of Proposed Rule Making (Van Wert, Ohio and Monroeville, Indiana)* (MM Docket No. 89-583), 4 FCC Rcd 8698 (1989). These arguments are not germane to this proceeding and therefore will not be discussed.

adoption of the *Community of License MO&O*, we issued a *Request for Supplemental Information* seeking comments on whether the proposed allotment should be credited with providing a first local transmission service to the proposed community or whether the new community should be attributed with all of the aural services authorized in the Urbanized Area. However, we do not believe it necessary to seek any additional information from the parties as there is sufficient evidence before us to determine that we should not regard this proposal as providing a first local transmission service to Norwood, but should instead view it as an additional transmission service to the Cincinnati Urbanized Area.

7. In *KFRC* and in a predecessor case, *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988), the Commission clarified the type of evidence to consider in determining whether a suburban community should be denied a first local service preference. The Commission relies primarily on three criteria to determine if a preference is warranted. First, "signal population coverage" is examined. This refers to the degree to which the proposed station could provide service not only to the suburban community, but to the adjacent metropolis as well. Second, we examine the size of the suburban community relative to the adjacent city, its proximity to the city, and whether the suburban community is within the Urbanized Area of the central city. Third, we determine the interdependence of the suburban community with the central city, looking at a wide range of evidence concerning work patterns, media services, opinions of suburban residents, community institutions, and community services. If the station could provide service to the metropolis, and if the community is relatively small, is within the Urbanized Area, and exhibits a high degree of interdependence with the metropolis, we are generally disinclined to grant a first local transmission service preference to the proposal. *See KFRC*, 5 FCC Rcd at 3223, and *Community of License MO&O*, 5 FCC Rcd 7097, n.14. We believe that these factors indicate that Norwood should not be awarded a first local transmission service preference.

8. With respect to signal population coverage, we note that petitioner proposes to use its existing transmitter site and facilities. Station WOFX has been granted a construction permit (BPH-890718IA) to relocate its transmitter to a site which permits the station's signal to cover the entire Cincinnati Urbanized Area.[5] Therefore, the station is currently capable of providing service to both Norwood and the Cincinnati Urbanized Area.

9. As for size and proximity, Norwood has a 1990 U.S. Census population of 23,674 persons, whereas Cincinnati has a 1990 Census population of 364,040 persons. Therefore, Norwood is approximately one-fifteenth the size of Cincinnati. Furthermore, Norwood is located within the Cincinnati Urbanized Area and is completely surrounded by Cincinnati.

10. With respect to the third factor, we conclude that Norwood is not sufficiently independent from Cincinnati to warrant a first local service preference. The *1991 Rand McNally Commercial Atlas and Marketing Guide* (*"Commercial Atlas"*) states that Norwood is incorporated, with at least one bank, a post office and a zip code. While these factors clearly support the status of Norwood as a community, they are not sufficient to show that Norwood is independent of Cincinnati. We note that the *Commercial Atlas* does not denote Norwood as a "principal business center," which is defined as "a city of major economic importance."[6]

11. Although Norwood exhibits some characteristics that would support a claim of independence, given its size and the fact that it is completely encompassed by Cincinnati, we conclude that Norwood is not entitled to a first local transmission service preference. Therefore, we must examine petitioner's proposal as providing an additional transmission service to the Cincinnati Urbanized Area.

12. *Comparative Analysis.* As stated in *Change of Community R&O, supra*, proposals to change a station's community of license will be decided based upon a comparison of the proposed allotment plan and the existing state of allotments for the communities involved. If the proposal would result in a preferential arrangement of allotments, the proposal will be granted. Further, to determine that a proposal would result in a preferential arrangement of allotments, the Commission stated that the decision would be guided by the allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*, which are:

(1) First fulltime aural service;

(2) Second fulltime aural service;

(3) First local service; and

(4) Other public interest matters.

[Co-equal weight would be given to priorities (2) and (3)]

90 FCC 2d 88 (1982).

Having determined that the proposal should not be credited as providing Norwood with its first local aural service, our decision is based on criteria relevant to priority four. Analyzed in this light, we find that the public interest would not be served by reallotting Channel 235B from Fairfield to Norwood. While there would be no loss of reception service, this proposal would result in a loss of Fairfield's only local nighttime, and only competitive, transmission service. As the Commission stated in the *Change of Community MO&O*, "The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallotting of a channel from one community to another, *regardless of whether the service removed constitutes a transmission service*, a reception service, or both." 5 FCC Rcd at 7097 (emphasis added).

13. We recognize that a grant of petitioner's proposal would not deprive Fairfield of its sole local broadcast

[5] At the site specified in its license, Station WOFX covers all of the Ohio portion of the Cincinnati Urbanized Area but only a limited portion of the Urbanized Area which lies within Kentucky.

[6] We note that Fairfield, with a 1990 Census population of 39,729 persons, is listed as a "principal business center."

service.[7] However, in this instance, we would be removing a second local transmission service from Fairfield in order to provide an eighteenth such service to the Cincinnati Urbanized Area. In this connection, we note that there would be no improvement in the reception service already provided by Station WOFX since it has not stated an intention to move to a site different from that specified in either its license or construction permit.[8] Therefore, given the limited public interest benefits presented by the petitioner, we do not believe that adoption of this proposal would justify the disruption of existing service at Fairfield.

14. Accordingly, IT IS ORDERED, That the petition for rule making filed by WLLT, Inc. to reallot Channel 235B from Fairfield, Ohio, to Norwood, Ohio, IS DENIED.

15. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

16. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[7] Although the opponents argue to the contrary, leaving a community with only a daytime-only AM service does not violate the dictates of the *Change of Community MO&O, supra.*

[8] Indeed, there is currently no technical impediment to Station WOFX providing Norwood with any specialized service at this time. As stated by the petitioner, the reallotment of Channel 235B to Norwood would not require a change in Station WOFX's transmitter site because it already provides the entire community with a 70 dBu city-grade signal.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-264

In the Matter of

Amendment of Section 73.202(b),	RM-7791
Table of Allotments,	
FM Broadcast Stations.	
(Bismarck, North Dakota)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: April 7, 1992; Released: April 16, 1992

By the Acting Chief, Allocations Branch:

1. At the request of Christopher G. Abbott ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making*, 6 FCC Rcd 5328 (1991), proposing the allotment of Channel 248C to Bismarck, North Dakota, as the community's sixth local commercial FM service. Petitioner filed comments reiterating his intention to apply for the channel.[1] No other comments were received.

2. We believe the public interest would be served by allotting Channel 248C to Bismarck, North Dakota, since an interest has been expressed in providing the community with an additional local FM transmission service. Channel 248C can be allotted to Bismarck in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.4 kilometers (2.1 miles) southeast to avoid a short-spacing to the reference coordinates and the construction permit for a new station on Channel 250A at Beulah, North Dakota.[2]

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **June 1, 1992,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Bismarck,	225C, 233C, 243C,
North Dakota	248C, 254C, 268C

4. The window period for filing applications will open on **June 2, 1992,** and close on **July 2, 1992.**

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

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[1] Petitioner's comments were late-filed. However, in accordance with Commission policy, the comments will be accepted for the purpose of expressing continuing interest since the proceeding is uncontested. *See Santa Isabel, Puerto Rico*, 3 FCC Rcd 2336 (1988), *aff'd*, 4 FCC Rcd 3412 (1989); *aff'd sub nom. Amor Family Broadcasting v. FCC*, 918 F.2d 960 (D.C. Cir. 1990), and *Weston and Webster Springs, West Virginia*, 5 FCC Rcd 1006 (1990).

[2] The coordinates for Channel 248C at Bismarck are North Latitude 46-47-35 and West Longitude 100-44-18.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-262

In the Matter of

Amendment of Section 73.202(b), RM-7792
Table of Allotments,
FM Broadcast Stations.
(Walterboro, South Carolina)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: April 7, 1992; Released: April 16, 1992

By the Acting Chief, Allocations Branch:

1. At the request of Gresham Communication, Inc. ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making*, 6 FCC Rcd 5315 (1991), proposing the substitution of Channel 265C3 for Channel 265A at Walterboro, South Carolina, and the modification of Station WALD-FM's license to specify operation on the higher class channel. Petitioner filed comments reiterating its intention to apply for the channel, if allotted. No other comments were received.

2. We believe the public interest would be served by substituting Channel 265C3 to Walterboro since it could provide the community with a wide coverage area FM service and enable Station WALD-FM to expand it service area. Channel 256C3 can be allotted to Walterboro in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.7 kilometers (12.2 miles) northeast to accommodate petitioner's desired transmitter site.[1] [2] As proposed, we will also modify Station WALD-FM's license to specify operation on Channel 265C3.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **June 1, 1992**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Walterboro, South Carolina	265C3, 287A

4. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Gresham Communication, Inc., for Station WALD-FM, Walterboro, South Carolina, IS MODIFIED to specify operation on Channel 265C3, in lieu of Channel 265A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That the Secretary SHALL SEND a copy of this *Report and Order*, by Certified Mail, Return Receipt Requested, to the following licensees: Southern Communications, Inc., Station WSUY, P.O. Box 705, Mt. Pleasant, South Carolina 29465, and Georgetown Broadcasting Company, Station WGTN-FM, 1666 K Street, N.W., Suite 901, Washington, D.C. 20006.

6. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Gresham Communication, Inc., licensee of Station WALD-FM, is required to submit a rule making fee in addition to the fee required for the applications to effect the change in community of license and/or upgrade.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 265C3 at Walterboro are North Latitude 32-59-00 and West Longitude 80-28-00.

[2] We note that Channel 265C3 at Walterboro is short-spaced to the presently licensed operation of Stations WSUY, Channel 264A, Charleston, South Carolina, and WGTN-FM, Channel 265A, Andrews, South Carolina. However, pursuant to the *Report and Order* in MM Docket No. 90-32, Station WSUY's license was modified to specify operation on Channel 263C3 and Station WGTN-FM's license was modified to specify operation on Channel 264A. *See* 6 FCC Rcd 4285 (1991). The licensees will be served with a copy of this *Report and Order*.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-81

In the Matter of

Amendment of Section 73.606(b), RM-7875
Table of Allotments,
Television Broadcast Stations.
(Farmington and Gallup, New Mexico)

NOTICE OF PROPOSED RULE MAKING

Adopted: April 7, 1992; Released: April 16, 1992

Comment Date: June 8, 1992
Reply Comment Date: June 23, 1992

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Pulitzer Broadcasting Company ("petitioner"), permittee of Station KOAV-TV, Channel 3, Gallup, New Mexico. Petitioner, pursuant to Section 1.420(i) of the Commission's Rules, requests the reallotment of Channel 3 from Gallup to Farmington, New Mexico, as the community's second local VHF television service, and the modification of Station KOAV-TV's construction permit to specify Farmington as its community of license.

2. Petitioner contends that its request complies with the dictates of the Commission's decision in *Modification of FM and TV Authorizations to Specify a New Community of License* ("*Modification of License I*"), 4 FCC Rcd 4870 (1989), *recon. granted in part* ("*Modification of License II*"), 5 FCC Rcd 7094 (1990). It states that a proposal to change a station's community of license may be granted if the existing and proposed allotments are mutually exclusive, the new allotment better serves the Commission's allotment priorities and the reallotment of the channel will not deprive the original community of its only existing local transmission service. Petitioner submits that adoption of its proposal would indeed satisfy all of the above requirements. First, the allotment of Channel 3 at Farmington is mutually exclusive with its allotment at Farmington since the two communities are located closer than the 304.9 kilometers (189.5 miles) required for co-channel allotments. Secondly, the allotment of Channel 3 at Farmington would better serve the allotment priorities because it would provide a first television reception service to at least 11,232 persons and a second such service to at least 90,462 persons. In addition, the channel would be reallotted to a more populous community and one which has a greater economic, cultural and social stature within the state.[1] Lastly, the reallotment of channels will not deprive Gallup of its sole existing local transmission service because petitioner has not yet constructed Station KOAV.

3. Gallup, with a population of 19,154 persons, is located in McKinley County (population 60,686),[2] and has allotted to it commercial VHF TV Channels 3 and 10, as well as Channel 8 which is reserved for noncommercial educational use. While these channels were allotted to Gallup by the Commission in 1952, with the exception of Station KOAV's outstanding construction permit on Channel 3, none of the channels are occupied or applied for.[3] According to the petitioner, Gallup also receives secondary television reception service from eight translator stations.[4] Farmington, with a population of 33,997 persons, is located in San Juan County (population 91,605) and has allotted to it commercial VHF TV Channel 12, which is licensed to Station KOBF, and unoccupied and unapplied for UHF TV Channel 15, which is reserved for noncommercial educational use.

4. Petitioner states that reallotting Channel 3 to Farmington would enable Station KOAV to provide service to a total of 142,098 persons, based upon 1986 Census data, which includes a first television reception service to 11,232 persons within an area of 2,610 square kilometers (1,008 square miles). In addition, petitioner claims that Station KOAV would provide Farmington with a first competitive and second reception service. According to petitioner, this second reception service covers an area of 13,095 square kilometers (5,058 square miles) with a population of 90,462 persons. It recognizes that the communities of Farmington, Bloomfield and Aztec, New Mexico, are within the theoretical Grade B contour of Station KREZ-TV, Channel 6, Durango, Colorado. However, it submits an engineering report showing that terrain obstructions between Durango and the New Mexico communities in reality prevent the Durango signal from covering this area.

5. Petitioner also states that the proscription against removing a community's sole local broadcast transmission service does not apply in this case. Station KOAV does not represent an existing service because it is non-operational. It points to the *Modification of License II* where the Commission stated that for the purposes of change of community rule makings, unconstructed permits would not be considered as an "existing service." Further, because the construction permit was not granted as the result of a comparative hearing, there is also no requirement that Station KOAV operate at Gallup for at least

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[1] The television allotment priorities are: (1) provide at least one television service to all parts of the United States; (2) provide each community with at least one television broadcast station; (3) provide a choice of at least two television services to all parts of the United States; (4) provide each community with at least two television broadcast stations; and (5) assign any remaining channels to communities based on population, geographic location, and the number of television services availability to the community from stations located in other communities. *See Sixth Report and Order on Television Allocations*, 41 FCC 148, 167 (1952).

[2] Population figures are taken from the 1990 U.S. Census, unless otherwise indicated.

[3] *See Sixth Report and Order on Television Allocations, supra.*

[4] There are also construction permits outstanding for three additional translators and pending applications for another three translators.

one year before seeking a change in community. The petitioner also recognizes the Commission's concern that changing a station's community of license could result in the loss of service to an area accustomed to receiving the station's signal. However, petitioner contends that such concerns are not present here because Station KOAV is not on the air and thus there is no existing reception service to lose.

DISCUSSION

6. We believe that the public interest would be served by soliciting comments on petitioner's proposal to reallot Channel 3 from Gallup to Farmington, New Mexico. If adopted, Channel 3 could provide Farmington with a first local competitive television service without depriving Gallup of its sole existing local service. We tentatively conclude that an unbuilt construction permit should not be considered an existing service in the context of change of community rule makings. *See Modification of License II, supra.* In addition, petitioner does not seek to reallot Channel 3 from a rural to an urbanized area. However, while each of these factors have led us to the conclusion that the petition meets the threshold requirements for consideration, a grant of the proposal must be predicated on a finding that the reallotment would result in a preferential arrangement of allotments.

7. Petitioner contends that the allotment of Channel 3 to Farmington would provide a first Grade B reception service to 11,232 persons and a second such service to an additional 90,462 persons. Petitioner states that it arrives at the first and second service figures by factoring in terrain obstructions between Durango and the New Mexico communities of Farmington, Bloomfield and Aztec. However, according to the petitioner, Station KREZ-TV's Grade B contour, as shown in Figure 3 of its engineering statement, does not reflect the station's actual signal attenuation. Petitioner states that it is impractical to determine the actual location of the Grade B contour in sparsely populated and often inaccessible rural areas based upon field strength measurements. Therefore, its population determination is based upon the predicted contour locations of Stations KREZ-TV, KOBF, KKTO and KOAV's assumed Farmington operation, except that the population of Farmington, Bloomfield and Aztec have been added to the total for second service which would be provided by Station KOAV. From the showings provided by the petitioner, we are unable to verify the claimed first and second television service. Therefore, we request that the petitioner provide a map showing the approximate contour of Station KREZ's actual coverage. The showing should also include a modified contour for Station KOAV at Farmington which accounts for the signal shielding in the direction of Durango.

8. Petitioner submits that the activation of Channel 3 at Gallup, with the facilities authorized in Station KOAV's construction permit, would provide a first Grade B service to 62,195 persons, while only 11,232 persons would receive a first Grade B service from the proposed Farmington station. Further, none of the population which would receive the first Grade B service from the Gallup station will receive service from a Farmington Channel 3 operation. In this regard, we are concerned that by deleting Channel 3 from Gallup we may be depriving the community of its only potential service, as evidenced by the fact that Channel 3 is the only channel that has been applied for. Thus, it appears that the only primary reception service to this population, at least in the short term, would come from Station KOAV.[5] Finally, we note that UHF TV Channels 24, 25, 28, 31, 36 and 38 can be allotted to Farmington to provide the community with an additional local television service without removing Channel 3 from Gallup. Therefore, petitioner is requested to submit information demonstrating why the reallotment of Channel 3 from Gallup to Farmington, rather than the allotment of a UHF channel to Farmington and the retention of Channel 3 at Gallup, would result in a preferential arrangement of allotments.

9. Channel 3 can be allotted to Farmington in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.7 kilometers (2.9 miles) southeast.[6] Although the Commission has imposed a temporary freeze on new television allotments in certain metropolitan areas, the proposed allotment at Farmington is not affected.[7]

10. Accordingly, we seek comments on the proposed amendment of the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, for the communities listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Farmington, New Mexico	12+, *15+	3, 12+, *15
Gallup, New Mexico	3, *8-, 10	*8-, 10

11. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

12. Interested parties may file comments on or before **June 8, 1992,** and reply comments on or before **June 23, 1992,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C.

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[5] Petitioner states that the anticipated programming of Station KOAV at Gallup-- satellite retransmission of Station KOAT-TV, Albuquerque -- is available on the local cable system and on a translator station. However, we have not considered these services as a substitute for over-the-air service in allotment proceedings, and we tentatively decline to do so here. *See, e.g., Television Satellite Stations Review of Policy and Rules,* 6 FCC Rcd at 4215, n. 19, n. 21.

[6] The coordinates for Channel 3 at Farmington are North Latitude 36-41-48 and West Longitude 108-10-39.

[7] *See Order, Advanced Television Systems and Their Impact on the Existing Television Broadcast Service,* 52 Fed. Reg. 28346, published July 29, 1987.

20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Erwin G. Krasnow, Esq.
Eric T. Werner, Esq.
Verner, Liipfert, Bernhard,
McPherson and Hand, Chartered
901 - 15th Street, N.W.
Washington, D.C. 20005-2301
(Counsel to petitioner)

13. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

14. For further information concerning this proceeding, contact Leslie K. Shapiro or Stanley Schmulewitz, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the TV Table of Allotments, Section 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-82

In the Matter of

Amendment of Section 73.202(b), RM-7843
Table of Allotments,
FM Broadcast Stations.
(Eatonville, Washington)

NOTICE OF PROPOSED RULE MAKING

Adopted: April 7, 1992; Released: April 16, 1992

Comment Date: June 8, 1992
Reply Comment Date: June 23, 1992

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Fatima Crusade Educational Radio Foundation ("petitioner") requesting the allotment of Channel 285A at Eatonville, Washington, as the community's first local aural transmission service.[1] Petitioner requests that the Commission reserve Channel 285A for noncommercial use, and states that it will apply for the channel if allotted to Eatonville as a noncommercial channel. It does not, however, state it will apply for the channel if allotted as a commercial channel, and must do so in comments responsive to this *Notice*.[2]

2. The Commission does not generally reserve a channel within the commercial band of the FM spectrum for noncommercial use, but instead reserves Channels 201-220 for such use. Exceptions to this policy have been made where channels in the noncommercial band are not available because of Canadian or Mexican allotments and where the use of the channels in the noncommercial educational band may result in potential interference to television operations on VHF Channel 6. *See Comobabi, Arizona,* 47 Fed. Reg. 32717, published July 29, 1982, and *Burlington and Newport, Vermont,* 45 RR 2d 786 (1979). In this instance, petitioner has not shown that either exception applies. Therefore, we will not propose the allotment of Channel 285A to Eatonville as a noncommercial allotment, but rather as a commercial allotment. If so allotted, petitioner may, if course, apply for a license on Channel 285A as a noncommercial educational station.

3. We believe the public interest would be served by proposing the allotment of Channel 285A to Eatonville, Washington, since it would provide the community with its first local aural transmission service. Channel 285A can be allotted to Eatonville in compliance with the Commission's minimum distance separation requirements at the petitioner's requested site without the imposition of a site restriction.[3] Since Eatonville is located within 320 kilometers (200 miles) of the U.S. -Canadian border, concurrence by the Canadian government has been obtained.

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Eatonville, Washington	---	285A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **June 8, 1992,** and reply comments on or before **June 23, 1992,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Kimberley M. Thompson
Fatima Crusade Educational
Radio Foundation
7241 Exeter Street, Apt. #17
Paramount, California 90723
(Petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte*

[1] This petition was originally filed as an untimely counterproposal in MM Docket No. 91-230. Based on the actions taken in that proceeding, we will propose the allotment of Channel 285A at Eatonville.

[2] In addition, petitioner failed to verify petition and is requested to do so in comments. *See* Section 1.52 of the Commission's Rules.

[3] The coordinates for Channel 285A at Eatonville are North Latitude 46-52-12 and West Longitude 122-16-06.

presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-84

In the Matter of

Amendment of Section 73.202(b), RM-7925
Table of Allotments,
FM Broadcast Stations.
(Ladson, South Carolina)

NOTICE OF PROPOSED RULE MAKING

Adopted: April 7, 1992; Released: April 16, 1992

Comment Date: June 8, 1992
Reply Comment Date: June 23, 1992

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by RJM Broadcasting ("petitioner" or "RJM") requesting the allotment of Channel 292A to Ladson, South Carolina, as the community's local Commercial FM service.[1] Petitioner states that it will apply for the channel, if allotted.

2. We believe the public interest would be served by proposing the allotment of Channel 292A to Ladson, South Carolina, since it could provide the community with its first local FM service. Channel 292A can be allotted to Ladson in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.6 kilometers (2.9 miles) south to avoid short-spacings to Station WTUA-FM, Channel 291A, St. Stephen, South Carolina, and to Station WSYN Channel 293C2, Georgetown, South Carolina.[2]

3. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Ladson, South Carolina	--	292A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **June 8, 1992,** and reply comments on or before **June 23, 1992,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Gregory P. Bunce, Partner
171 Church Street, Suite 210
Charleston, South Carolina 29401
(Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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[1] At the request of RJM, the Commission originally proposed the allotment of Channel 292A to Stallsville, South Carolina, in MM Docket No. 89-326. Rather than respond to questions concerning Stallsville's status as a community for allotment purposes, RJM instead proposed that Channel 292A be allotted to Ladson. In the *Report and Order*, the Commission found that Stallsville did not qualify as a community for allotment purposes. The Commission also refused to consider the untimely filed Ladson proposal. *See* 7 FCC Rcd 544 (1992). However, we stated that a separate *Notice of Proposed Rule Making* would be issued since the resolution of MM Docket No. 89-326 did not preclude consideration of the Ladson allotment.

[2] The coordinates for Channel 292A at Ladson, South Carolina, are North Latitude 32-56-47 and West Longitude 80-05-39. Because RJM's petition was filed prior to October2, 1989, the minimum distance separation requirements used herein are those in effect prior to the 6 kW spacing requirements.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Thomas J. & Nancy A. McIlraith
Puyallup, Washington

Unlicensed Operation of a
Ship Radio Station in the
Maritime Mobile Radio Service

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 17, 1992; Released: April 17, 1992

By the Commission:

1. On August 28, 1991, at 6:49 AM PST, an employee at the Commission's Ferndale, Washington, monitoring facility intercepted transmissions from a ship radio station operating on 157.400 MHz, Marine Channel 28. The operator identified himself as Tom McIlraith and the ship station as MARY LOUISE B, WX9470.

2. A search of the Commission's license records for ship radio stations reveals no license for a vessel named MARY LOUISE B. However, a search of the Commission's 1980 list of license records for ship radio stations reveals that the call sign WX9470 was formerly held by Wards Cove Packing for use by up to 30 vessel stations. The 1981 edition of the U. S. Coast Guard publication CG-408 reflects a vessel with Official Number 507010, owned by Wards Cove Packing. The 1989 edition of the same publication reflects the same vessel with Official Number 507010 as owned by Thomas J. McIlraith. The U.S. Coast Guard advises that the current registration for the vessel MARY LOUISE B, Official Number 507010, is Thomas J. & Nancy A. McIlraith, 14012 112th Ave. Ct. E, Puyallup, WA 98374.

3. On September 3, 1991, a Commission staff member at the Ferndale monitoring facility telephoned Thomas McIlraith to inquire about the status of his ship radio station license. Mr. McIlriath admitted that his ship radio station was not licensed. He claimed that he did not know that he needed one.

4. Section 301 of the Communications Act provides in relevant part:

> No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio . . . except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.

Similarly, Section 80.13(a) of the Commission's Rules states:

> All stations in the maritime services must be licensed by the FCC.

In addition, Section 1.924(a)(2) of the Commission's Rules specifies that ship radio station licenses are not transferrable. Whenever a ship radio station is sold, the station license must be returned to the Commission for cancellation and the new owner must apply for a new station authorization. Any operation of the station after transfer of ownership and prior to granting of a station authorization to the new owner is a violation of Section 301 of the Communications Act and Section 80.13(a) of the Commission's Rules. Consequently, it is determined that an apparent violation of Section 301 of the Communications Act and Section 80.13(a) of the Commission's Rules has occurred for operating a facility after transfer of ownership.

5. Section 503(b) of the Communications Act states in pertinent part:

> Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this sub-section, to have---
>
> (B) willfully or repeatedly failed to comply with any of the provisions of this chapter or of any rule, regulation, or order issued by the Commission under this chapter . . . shall be liable to the United States for a forfeiture penalty.

6. Pursuant to our *Policy Statement, Standards for Assessing Forfeitures*, 6 FCC Rcd 4695 (1991), *recon. pending*, the base forfeiture amount for operation of a private radio station without an instrument of authorization for the service is $8,000. No adjustments appear appropriate in this case.

7. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. Sec 503(b) and Section 1.80 of the Commission's rules, 47 C.F.R. Sec. 1.80, IT IS ORDERED that Thomas J. and Nancy A. McIlraith ARE APPARENTLY LIABLE FOR A FORFEITURE in the amount of Eight Thousand Dollars ($8,000) for the willful violation of the aforementioned statutory and rule provisions on August 28, 1991. The amount of the forfeiture specified was determined after consideration of the factors set forth in Section 503(b)(2) of the Communications Act of 1934, as amended.

8. It is further ordered, pursuant to Section 1.80(a)(3) of the Commission's Rules, 47 C.F.R. §1.80(a)(3), that Thomas J. and Nancy A. McIlraith shall, within thirty (30) days of the release of this Notice, pay the full amount of the forfeiture or file a written response showing why the forfeiture should be reduced or not imposed.

9. Payment of the forfeiture may be made by mailing a check or similar instrument to the Commission within thirty (30) days of the release date of this order, payable to the order of the Federal Communications Commission, to: Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

John B. Hooper
Seattle, Washington

Unlicensed operation of a
Ship Radio Station in the
Maritime Mobile Radio Service

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 17, 1992; Released: April 17, 1992

By the Commission:

1. On August 30, 1991, at 6:42 PM PST, an employee of the Commission's Ferndale, Washington, monitoring facility intercepted transmissions from a ship radio station operating on 157.400 MHz, marine channel 28. The station identified itself as "OLYMPIC, WSA8211".

2. The Commission's records indicate that the license for WSA8211 aboard the vessel "OLYMPIC" expired on May 8, 1991 and has not been renewed.

3. On August 31, 1991, a Commission staff member at the Ferndale monitoring facility telephoned John B. Hooper and inquired about the status of his ship station license. Mr. Hooper admitted that he still owned the vessel "OLYMPIC" but claimed that he was unaware that the license had expired. He also advised that his current address is 3017 42nd W., Seattle, Washington 98199.

4. Section 301 of the Communications Act provides in relevant part:

> No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio . . . except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.

Similarly, Section 80.13(a) of the Commission's Rules states:

> All stations in the maritime services must be licensed by the FCC. Any operation of ship radio station WSA8211 after expiration of the license on May 8, 1991, was unauthorized and in violation of Section 301 of the Communications Act and Section 80.13(a) of the rules. Consequently, it is determined that an apparent violation of Section 301 of the Communications Act and Section 80.13(a) of the Commission's rules has occurred for operating a facility without an authorization after that date.

5. Section 503(b) of the Communications Act states in pertinent part:

> Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this sub-section, to have---
>
> (B) willfully or repeatedly failed to comply with any of the provisions of this chapter or of any rule, regulation, or order issued by the Commission under this chapter . . . shall be liable to the United States for a forfeiture penalty.

6. Pursuant to our *Policy Statement, Standards for Assessing Forfeitures*, 6 FCC Rcd 4695 (1991), *recon. pending*, the base forfeiture amount for operation of a private radio station without an instrument of authorization for the service is $8,000. No adjustments appear appropriate in this case.

7. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. Sec 503(b) and Section 1.80 of the Commission's rules, 47 C.F.R. Sec. 1.80, IT IS ORDERED that John B. Hooper IS APPARENTLY LIABLE FOR A FORFEITURE in the amount of Eight Thousand Dollars ($8,000) for the willful violation of the aforementioned statutory and rule provisions on August 30, 1991. The amount of the forfeiture specified was determined after consideration of the factors set forth in Section 503(b)(2) of the Communications Act of 1934, as amended.

8. It is further ordered, pursuant to Section 1.80(f)(3) of the Commission's Rules, 47 C.F.R. §1.80(f)(3), that John B. Hooper shall, within thirty (30) days of the release of this Notice, pay the full amount of the forfeiture or file a written response showing why the forfeiture should be reduced or not imposed.

9. Payment of the forfeiture may be made by mailing a check or similar instrument to the Commission within thirty (30) days of the release date of this order, payable to the order of the Federal Communications Commission, to: Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Dale Corbett, dba, Astoria Cruise
and Charter, Astoria, Oregon

Operation of an Unlicensed
Coast Station in the
Maritime Mobile Radio Service

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 17, 1992; Released: April 17, 1992

By the Commission:

1. On July 30, 1991, at 7:44 AM PST, an employee of the Commission's Ferndale, Washington, monitoring facility intercepted transmissions on marine channel 7, 156.350 MHz, identified only as "AC AND C BASE". The operator appeared to be female and communicated with a vessel named "BEWITCHED". At 8:00 AM the same operator made additional transmissions. At that time, the station communicated with addressed the operator as "Linda".

2. On July 31, 1991, when he reviewed the previous day's recording, the employee noted a vessel calling Astoria Cruise and Charter. The Commission employee telephoned Astoria Cruise and Charter and spoke with an employee named Linda. She admitted that she was the person who had been operating the radio on the previous day. She said their station was licensed and the call sign was WZA836. She gave their address as Astoria Cruise and Charter, 352 Industry, Astoria, Oregon 97103.

3. After finding no record of a license at that address, the Commission employee again called Astoria Cruise and Charter. Linda said she was only an employee and a new owner had taken over the business in June. She was verbally advised that the station was unlicensed. At 3:45 PM on the same date, owner Dale Corbett called and said he had a license for the station with the call sign WZA836. When asked for the license expiration date, he said 5-22-89. He was verbally advised that the station was unlicensed.

4. Section 301 of the Communications Act provides in relevant part:

> No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio . . . except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.

Similarly, Section 80.13(a) of the Commission's Rules states:

> All stations in the maritime services must be licensed by the FCC.

Whenever a transfer of ownership or control of a coast station occurs, modification of the station authorization must be requested in accordance with Sections 80.29(a) and 1.924(b)(2)(iv) of the Commission's rules. Since these actions were not taken and no effort was made to maintain any prior license in a current status, the operations were unauthorized and in violation of Section 301 of the Communications Act and Section 80.13(a) of the rules. Consequently, it is determined that an apparent violation of Section 301 of the Communications Act and Section 80.13(a) of the Commission's rules has occurred for operating the facility after transfer of control without a proper station authorization.

5. Section 503(b) of the Communications Act states in pertinent part:

> Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this sub-section, to have---
>
> (B) willfully or repeatedly failed to comply with any of the provisions of this chapter or of any rule, regulation, or order issued by the Commission under this chapter . . . shall be liable to the United States for a forfeiture penalty.

6. Pursuant to our *Policy Statement, Standards for Assessing Forfeitures*, 6 FCC Rcd 4695 (1991), *recon. pending*, the base forfeiture amount for operation of a private radio station without an instrument of authorization for the service is $8,000. No adjustments appear appropriate in this case.

7. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. Sec 503(b) and Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, it is ordered that Mr. Dale Corbett, dba Astoria Cruise and Charter, is apparently liable for a forfeiture in the amount of Eight Thousand Dollars ($8,000) for the willful violation of the aforementioned statutory and rule provisions on September 4, 1991. The amount of the forfeiture specified was determined after consideration of the factors set forth in Section 503(b)(2) of the Communications Act of 1934, as amended.

8. It is further ordered, pursuant to Section 1.80(f)(3) of the Commission's Rules, 47 C.F.R. §1.80(f)(3), that Dale Corbett, dba Astoria Cruise and Charter, shall, within thirty (30) days of the release of this Notice, pay the full amount of the forfeiture or file a written response showing why the forfeiture should be reduced or not imposed.

9. Payment of the forfeiture may be made by mailing a check or similar instrument to the Commission within thirty (30) days of the release date of this order, payable to the order of the Federal Communications Commission, to: Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of

Mrs. Michael W. Schifsky
Eastsound, WA

Operation of an Unlicensed
Coast Station in the
Maritime Mobile Radio Service

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 17, 1992; Released: April 17, 1992

By the Commission:

1. On September 4, 1991, at 7:50 PM PST, an employee at the Commission's Ferndale, Washington, monitoring facility intercepted transmissions from a station identified as "MARQUITTA II" on marine channel 68, 156.425 MHz. The operator appeared to be female and appeared to be operating from a coast station. The calling vessel was broken but tentatively identified as "MARQUITTA I, WU . . . 707". A check of the Commission's marine licensing records disclosed the vessel MARQUITTA, WUZ7707, expiring 7/14/93. The licensee is Michael W. Schifsky, Rt. 1 Box 112B, Eastsound, Washington 98245.

At 8:35 PM PST on the same date, a Commission staff member at the Ferndale monitoring facility telephoned the Schifsky residence and spoke with Mrs. Schifsky. She admitted the communications and stated that she thought the station license was downstairs. The license she produced in response to our request was an amateur license, KA7ZVI, issued to her husband. On September 5, 1991, Mr. Schifsky called the Ferndale Monitoring Station and confirmed that he did not possess a license for his private coast station.

2. Section 301 of the Communications Act provides in relevant part:

> No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio . . . except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.

Similarly, Section 80.13(a) of the Commission's Rules states:

> All stations in the maritime services must be licensed by the FCC.

Any operation of the private coast radio station identified as "MARQUITTA II" was unauthorized and in violation of Section 301 of the Communications Act and Section 80.13(a) of the rules. Consequently, it is determined that an apparent violation of Section 301 of the Communications Act and Section 80.13(a) of the Commission's rules has occurred for operating a facility without an authorization.

3. Section 503(b) of the Communications Act states in pertinent part:

> Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this sub-section, to have---
>
> (B) willfully or repeatedly failed to comply with any of the provisions of this chapter or of any rule, regulation, or order issued by the Commission under this chapter . . . shall be liable to the United States for a forfeiture penalty.

4. Pursuant to our *Policy Statement, Standards for Assessing Forfeitures*, 6 FCC Rcd 4695 (1991), *recon. pending*, the base forfeiture amount for operation of a private radio station without an instrument of authorization for the service is $8,000. No adjustments appear appropriate in this case.

5. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. Sec 503(b) and Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, IT IS ORDERED that Mrs. Michael W. Schifsky IS APPARENTLY LIABLE FOR A FORFEITURE in the amount of eight thousand dollars ($8,000) for the willful violation of the aforementioned statutory and rule provisions on September 4, 1991. The amount of the forfeiture specified was determined after consideration of the factors set forth in Section 503(b)(2) of the Communications Act of 1934, as amended.

6. IT IS FURTHER ORDERED, pursuant to Section 1.80(a)(3) of the Commission's Rules, 47 C.F.R. §1.80(a)(3), that Mrs. Michael W. Schifsky shall, within thirty (30) days of the release of this Notice, pay the full amount of the forfeiture or file a written response showing why the forfeiture should be reduced or not imposed.

7. Forfeitures shall be paid by check or money order payable to the Federal Communications Commission. Payment should be mailed to the following address:

Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

If you wish to file a written response regarding why the forfeiture should be reduced or not be imposed, please send it to:

Federal Communications Commission
Field Operations Bureau
Enforcement Division
Attention: Notice of Liability Response
Room 744
1919 M Street, NW
Washington, D.C. 20554

8. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for a Monetary Forfeiture Penalty shall be sent by certified mail, return receipt requested, to Mrs. Michael W. Schifsky, Rt. 1, Box 112B, Eastsound, Washington 98245.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Paul J. Troka
Concrete, Washington

Operation of an Unlicensed
Ship Radio Station in the
Maritime Mobile Radio Service

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 17, 1992; Released: April 17, 1992

By the Commission:

1. On August 31, 1991, at 6:57 AM PST, an employee of the Commission's Ferndale, Washington, monitoring facility intercepted transmissions on marine channel 28, 157.400 MHz, identified as "YANKEE MAID, WX9470". The Commission's license records fail to confirm existence of a valid license with the call sign WX9470. However, a search of the Commission's 1980 list of license records for ship radio stations reveals that the call sign was formerly held by Wards Cove Packing for a plurality of 30 stations. The 1981 edition of the U.S. Coast Guard publication CG-408 shows a vessel with Official Number 243430 with call sign WB4643 owned by Wards Cove Packing. The State of Washington has issued a commercial fishing license to Paul J. Troka, 854 Sobek Lane, Concrete, Washington 98237 for the vessel YANKEE MAID, #243430.

2. On September 2, 1991, an FCC employee telephoned Paul J. Troka to inquire about the licensing of his boat radio. Troka confirmed that he had purchased the vessel four years ago from Wards Cove Packing. He admitted that his station was unlicensed. He claimed he had submitted an application "a few months ago", but it was returned as defective and had not been resubmitted. On September 3, 1991, the Coast Guard confirmed that the current registered owner of the boat with Official Number 243430 is Paul J. Troka, Rt.1 854 Sobek Lane, Concrete, Washington 98237.

3. Section 301 of the Communications Act provides in relevant part:

> No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio . . . except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.

Similarly, Section 80.13(a) of the Commission's Rules states:

> All stations in the maritime services must be licensed by the FCC.

In addition, Section 1.924(a)(2) of the Commission's Rules specifies that ship radio station licenses are not transferrable. Whenever a ship radio station is sold, the station license must be returned to the Commission for cancellation and the new owner must apply for a new station authorization. Any operation of the station after transfer of ownership and prior to granting of a station authorization to the new owner is a violation of Section 301 of the Communications Act and Section 80.13(a) of the Commission's Rules. Consequently, it is determined that an apparent violation of Section 301 of the Communications Act and Section 80.13(a) of the Commission's rules has occurred for operating a facility after transfer of ownership.

4. Section 503(b) of the Communications Act states in pertinent part:

> Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this sub-section, to have---
>
> (B) willfully or repeatedly failed to comply with any of the provisions of this chapter or of any rule, regulation, or order issued by the Commission under this chapter . . . shall be liable to the United States for a forfeiture penalty.

5. Pursuant to our *Policy Statement, Standards for Assessing Forfeitures*, 6 FCC Rcd 4695 (1991), *recon. pending*, the base forfeiture amount for operation of a private radio station without an instrument of authorization for the service is $8,000. No adjustments appear appropriate in this case.

6. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. Sec 503(b) and Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, IT IS ORDERED that Mr. Paul J. Troka is APPARENTLY LIABLE FOR A FORFEITURE in the amount of Eight Thousand Dollars ($8,000) for the willful violation of the aforementioned statutory and rule provisions on August 31, 1991. The amount of the forfeiture specified was determined after consideration of the factors set forth in Section 503(b)(2) of the Communications Act of 1934, as amended.

7. IT IS FURTHER ORDERED, pursuant to Section 1.80(f)(3) of the Commission's Rules, 47 C.F.R. §1.80(f)(3), that Paul J. Troka shall, within thirty (30) days of the release of this Notice, pay the full amount of the forfeiture or file a written response showing why the forfeiture should be reduced or not imposed.

8. Forfeitures shall be paid by check or money order payable to the Federal Communications Commission. Payment should be mailed to the following address:

> Federal Communications Commission
> Post Office Box 73482
> Chicago, Illinois 60673-7482

If you wish to file a written response regarding why the forfeiture should be reduced or not be imposed, please send it to:

Federal Communications Commission
Field Operations Bureau
Enforcement Division
Attention: Notice of Liability Response
Room 744
1919 M Street, NW
Washington, D.C. 20554

9. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for a Monetary Forfeiture Penalty shall be sent by certified mail, return receipt requested, to Paul J. Troka, Rt. 1, 854 Sobek Lane, Concrete, WA 98237.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

KFC USA, Inc.
(Kuo Fang Corporation)
Costa Mesa, California

NOTICE OF APPARENT LIABILITY

Adopted: March 17, 1992 **Released: April 17, 1992**

By the Commission:

I. INTRODUCTION

1. This is a Notice of Apparent Liability for Monetary Forfeiture issued pursuant to Section 503(b) of the Communications Act of 1934, as amended, (the Act), 47 U.S.C § 503(b), to KFC USA, Inc. (KFC) for repeated violation of Section 2.803 of the Commission's Rules, 47 C.F.R. §2.803. On May 20 and 22, 1991, at the Spring '91 COMDEX trade show in Atlanta, Georgia, KFC offered for sale a notebook personal computer, Class B digital device for which no equipment authorization had been granted. See 47 C.F.R. §§ 15.3(i) & (s), 15.101(a). No notice was conspicuously displayed, as prescribed in Section 2.803 of the Rules, which would have caused the action not to be deemed an offer for sale.

2. The appropriate amount of forfeiture for this violation is $15,000.

II. BACKGROUND

3. KFC is a manufacturer of personal computers. These are defined to be Class B digital devices under Part 15 of the Commission's Rules and as such are subject to the equipment authorization requirements and marketing restrictions. Specifically, they must be certified by the Commission before they may be offered for sale. Offer for sale includes display and demonstration unless the display is accompanied by a conspicuous notice with the following wording specified by the Rules: "This device has not been approved by the Federal Communications Commission. This device is not, and may not be, offered for sale or lease, or sold or leased until the approval of the FCC has been obtained." 47 C.F.R. § 2.803. *See also* 47 U.S.C. § 302(b).

4. On May 20, 1991, an employee of the Commission's Field Operations Bureau (FOB) visited the KFC booth at the Spring '91 COMDEX show in Atlanta, Georgia, in the same manner as usual visitors, identified himself as an FCC employee, and observed on display a notebook personal computer which was not certified by the Commission. There was no conspicuous notice accompanying the display, as prescribed by the Rules. The notice required by the Rules was attached to the top of the case so that when the device was displayed in the normal fashion it was effectively on the back, facing away from the attenders. KFC was advised to conspicuously display the notice and that its current location was unacceptable as the case of the device was always open.

5. On May 22, 1991, an employee of the FOB again visited the KFC booth at the COMDEX show and again observed the notebook personal computer on display. In this instance the required notice was on the bottom of the case and, again, not visible.

6. Previously, on December 31, 1990, the FOB had assessed a monetary forfeiture of $2,000 to KFC. The forfeiture was paid on January 23, 1991. The forfeiture was for having displayed a KFC Almega 386SX laptop computer on November 12, 1990, at the Fall '90 COMDEX show without the required conspicuous statement concerning the fact that it had not been certified by the Commission and for an offer for sale of the same device on December 8 and 28, 1990. At the time an FOB employee visited the KFC booth at the Fall '90 COMDEX show, he advised KFC of the requirement for display of a notice and one was added to the display before he left the booth. During the subsequent offer for sale by telephone on December 28, 1991, Mr. Victor Lee, sales manager for KFC told an FOB employee that the computer was the same as the one displayed at COMDEX and that attenders at COMDEX were told that the computer was unavailable only because FCC inspectors were there.

III. DISCUSSION

7. KFC has clearly violated Section 302(b) of the Communications Act and Section 2.803 of the Rules on five occasions within the past year.

8. The violations on May 20 and 22, 1991, are clearly willful and also repeated. Pursuant to our *Policy Statement, Standards for Assessing Forfeitures*, 6 FCC Record 4695 (1991), *recon. pending*, the base forfeiture amount for marketing unauthorized equipment would be $7,000.

9. Due to the previous violations and the fact that the violation here was repeated the day after KFC was advised of its violation, it is appropriate that the amount of forfeiture be increased to $18,000. As the required notice was present, although not conspicuously displayed, on May 20, we are decreasing the forfeiture by $3,000 for good faith attempt at compliance with the Rules. Accordingly, a forfeiture of $15,000 is appropriate. This is consistent with the *Policy Statement*.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and Section 1.80 of the Commission's Rules, 47 C.F.R. § 1.80, that KFC USA, Inc. IS APPARENTLY LIABLE FOR A MONETARY FORFEITURE in the amount of $15,000 for marketing uncertified personal computers in violation of Section 302(b) of the Communications Act and Section 2.803 of the Commission's Rules. The amount specified was determined after consideration of the factors set forth in Section 503(b) of the Communications Act.

11. IT IS FURTHER ORDERED, pursuant to Section 1.80(f)(3) of the Commission's rules, 47 C.F.R. § 1.80(f)(3), that KFC USA, Inc., shall, within thirty (30) days of the release of this Notice, pay the full amount of the forfeiture or file a written response showing why the

forfeiture should be reduced or not imposed. Forfeitures shall be paid by check or money order payable to the Federal Communications Commission. Payment should be mailed to the following address:

Federal Communications Commission
P.O. Box 73482
Chicago, Illinois 60673-7482

Send written responses regarding why the forfeiture should be reduced or not imposed to:

Federal Communications Commission
Field Operations Bureau
Enforcement Division
Attention: NAL response
Room 744
1919 M Street, NW
Washington, D.C. 20554

12. IT IS FURTHER ORDERED that the Secretary shall send by registered mail a copy of this Notice of Apparent Liability for Monetary Forfeiture to KFC USA, Inc., 1585 Sunland Lane, Costa Mesa, California 92626.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Prime Portable Manufacturer, Inc.
South El Monte, California

NOTICE OF APPARENT LIABILITY

Adopted: March 17, 1992; Released: April 17, 1992

By the Commission:

I. INTRODUCTION

1. This is a Notice of Apparent Liability to Monetary Forfeiture issued pursuant to Section 503(b) of the Communications Act of 1934, as amended, (the Act), 47 U.S.C § 503(b), to Prime Portable Manufacturer, Inc. (Prime) for violation of Section 2.803 of the Commission's Rules, 47 C.F.R. §2.803. On May 21, 1991, at the Spring '91 COMDEX trade show in Atlanta, Georgia, Prime offered for sale a PC-III Laptop VGA computer, Class B digital device for which no equipment authorization had been granted. *See* 47 C.F.R. §§ 15.3(i) & (s), 15.101(a). No notice was conspicuously displayed, as prescribed in Section 2.803 of the Rules, which would have caused the action not to be deemed an offer for sale.

2. The appropriate amount of forfeiture for this violation is $10,000.

II. BACKGROUND

3. Prime is a manufacturer of personal computers. These are defined to be Class B digital devices under Part 15 of the Commission's Rules and as such are subject to the equipment authorization requirements and marketing restrictions. Specifically, they must be certified by the Commission before they may be offered for sale. Offer for sale includes display and demonstration unless the display is accompanied by a conspicuous notice with the following wording specified by the Rules: "This device has not been approved by the Federal Communications Commission. This device is not, and may not be, offered for sale or lease, or sold or leased until the approval of the FCC has been obtained." 47 C.F.R. § 2.803. *See also* 47 U.S.C. § 302(b).

4. On May 21, 1991, an employee of the Commission's Field Operations Bureau (FOB) visited the area of the Spring '91 COMDEX show in Atlanta, Georgia, in the same manner as usual attendees and observed on display a model of a personal computer which was not certified by the Commission. There was no conspicuous notice accompanying the display, as prescribed by the Rules. The model was a PC-III Laptop computer.

5. Prime appears to have violated these rules before. Previously, on December 24, 1990, the FOB had assessed a monetary forfeiture of $2,000 to Prime for having displayed a PPM model PC-III Laptop VGA 286/16 portable personal computer on November 13, 1990, at the Fall '90 COMDEX show without the required conspicuous statement concerning the fact that it had not been certified by the Commission.

III. DISCUSSION

6. Prime has clearly violated Section 302(b) of the Communications Act and Section 2.803 of the Rules on two occasions within the past year. The same device was involved on both occasions.

7. This is clearly a willful violation. Pursuant to our *Policy Statement, Standards for Assessing Forfeitures*, 6 FCC Record 4695 (1991), *recon. pending*, the base forfeiture amount for marketing unauthorized equipment is $7,000.

8. Due to the previous history of apparent violations and consistent with the *Policy Statement*, it is appropriate that the amount of forfeiture be increased to $10,000.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and Section 1.80 of the Commission's Rules, 47 C.F.R. § 1.80, that Prime Portable Manufacturer, Inc. IS APPARENTLY LIABLE FOR A MONETARY FORFEITURE in the amount of $10,000 for marketing uncertified personal computers in violation of Section 302(b) of the Communications Act and Section 2.803 of the Commission's Rules. The amount specified was determined after consideration of the factors set forth in Section 503(b) of the Communications Act.

10. IT IS FURTHER ORDERED, pursuant to Section 1.80(f)(3) of the Commission's rules, 47C.F.R. § 1.80(f)(3), that Prime Portable Manufacturer, Inc., shall, within thirty (30) days of the release of this Notice, pay the full amount of the forfeiture or file a written response showing why the forfeiture should be reduced or not imposed. Forfeitures shall be paid by check or money order payable to the Federal Communications Commission. Payment should be mailed to the following address:

Federal Communications Commission
P.O. Box 73482
Chicago, Illinois 60673-7482

Send written responses regarding why the forfeiture should be reduced or not imposed to:

Federal Communications Commission
Field Operations Bureau
Enforcement Division
Attention: NAL response
Room 744
1919 M Street, NW
Washington, D.C. 20554

11. IT IS FURTHER ORDERED that the Secretary shall send by registered mail a copy of this Notice of Apparent Liability for Monetary Forfeiture to Prime Portable Manufacturer, Inc., 1431 Potrero Avenue, Unit E, South El Monte, California 91733.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Artdex Computer Corporation
Taipei Hsien, Taiwan

NOTICE OF APPARENT LIABILITY

Adopted: March 17, 1992; Released: April 17, 1992

By the Commission:

I. INTRODUCTION

1. This is a Notice of Apparent Liability to Monetary Forfeiture issued pursuant to Section 503(b) of the Communications Act of 1934, as amended, (the Act), 47 U.S.C § 503(b), to the Artdex Computer Corporation (Artdex) for violation of Section 2.803 of the Commission's Rules, 47 C.F.R. §2.803. On May 22, 1991, at the Spring '91 COMDEX trade show in Atlanta, Georgia, Artdex offered for sale an Artdex GEM 286 laptop, Class B digital device and two other models of GEM personal computers, Class B digital devices for which no equipment authorization had been granted. See 47 C.F.R. §§ 15.3(i) & (s), 15.101(a). No notice was conspicuously displayed, as prescribed in Section 2.803 of the Rules, which would have caused the action not to be deemed an offer for sale.

2. The appropriate amount of forfeiture for this violation is $10,000.

II. BACKGROUND

3. Artdex is a manufacturer of personal computers. These are defined to be Class B digital devices under Part 15 of the Commission's Rules and as such are subject to the equipment authorization requirements and marketing restrictions. Specifically, they must be certified by the Commission before they may be offered for sale. Offer for sale includes display and demonstration unless the display is accompanied by a conspicuous notice with the following wording specified by the Rules: "This device has not been approved by the Federal Communications Commission. This device is not, and may not be, offered for sale or lease, or sold or leased until the approval of the FCC has been obtained." 47 C.F.R. § 2.803. *See also* 47 U.S.C. § 302(b).

4. On May 22, 1991, an employee of the Commission's Field Operations Bureau (FOB) visited the area of the Spring '91 COMDEX show in Atlanta, Georgia, in the same manner as usual visitors and observed on display three models of personal computers which were not certified by the Commission. There was no conspicuous notice accompanying the display, as prescribed by the Rules. The three models were an Artdex GEM 286 laptop and two other models of GEM personal computers. The person at the display area identified himself as Gary Wang and presented himself as the Sales Manager for Artdex.

5. Previously, on January 24, 1990, the FOB had assessed a monetary forfeiture of $2,000 to Artdex for having displayed a GEM model 286 LT laptop computer on November 13, 1990, at the Fall '90 COMDEX show without the required conspicuous statement concerning the fact that it had not been certified by the Commission. The correspondent representing Artdex in all documents related to this incident identified used the name Gary Wang. The forfeiture was paid on July 10, 1991.

6. Artdex holds equipment authorizations for two models of personal computer-FCCIDs I7GGEM286 and I7GGEM386SX. The computers displayed at COMDEX did not bear either of these FCCIDs. Commission records indicate the grant mailing name and address as Chuck Kendall, CKC Laboratories, Inc. of Mariposa, California, for both equipment authorizations.

III. DISCUSSION

7. Artdex has violated Section 302(b) of the Communications Act and Section 2.803 of the Rules on two occasions within the past year. The same person, Gary Wang, was intimately involved on both occasions.

8. This is a willful violation; it is also repeated. Pursuant to our *Policy Statement, Standards for Assessing Forfeitures*, 6 FCC Record 4695 (1991), *recon. pending*, the base forfeiture amount for marketing unauthorized equipment is $7,000. Consistent with the *Policy Statement* we are adjusting the amount upward to $10,000 because of the previous violation of the same requirement by Artdex.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and Section 1.80 of the Commission's Rules, 47 C.F.R. § 1.80, that Artdex Computer Corporation IS APPARENTLY LIABLE FOR A MONETARY FORFEITURE in the amount of $10,000 for marketing uncertified personal computers in violation of Section 302(b) of the Communications Act and Section 2.803 of the Commission's Rules. The amount specified was determined after consideration of the factors set forth in Section 503(b) of the Communications Act.

10. IT IS FURTHER ORDERED, pursuant to Section 1.80(f)(3) of the Commission's rules, 47 C.F.R. § 1.80(f)(3), that Artdex Computer Corporation shall, within thirty (30) days of the release of this Notice, pay the full amount of the forfeiture or file a written response showing why the forfeiture should be reduced or not imposed. Forfeitures shall be paid by check or money order payable to the Federal Communications Commission. Payment should be mailed to the following address:

Federal Communications Commission
P.O. Box 73482
Chicago, Illinois 60673-7482

Send written responses regarding why the forfeiture should be reduced or not imposed to:

Federal Communications Commission
Field Operations Bureau
Enforcement Division
Attention: NAL response
Room 744
1919 M Street, NW
Washington, D.C. 20554

11. IT IS FURTHER ORDERED that the Secretary shall send by certified mail a copy of this Notice of Apparent Liability to Monetary Forfeiture to the agent for Artdex Computer Corporation in the United States, Chuck Kendall, CKC Laboratories, Inc., 5473A Clouds Rest, Mariposa, California 95338.

12. IT IS FURTHER ORDERED that the Secretary shall send by registered mail a copy of this Notice of Apparent Liability for Monetary Forfeiture to Artdex Computer Corporation, 6F No. 1, Lane 31, Chung Hsin Road, Hsi Chih, Taipei Hsien, Taiwan.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-83

In the Matter of

Amendment of Section 73.202(b), RM-7946
Table of Allotments,
FM Broadcast Stations.
(Jewett, New York)

NOTICE OF PROPOSED RULE MAKING

Adopted: April 7, 1992; Released: April 17, 1992

Comment Date: June 8, 1992
Reply Comment Date: June 23, 1992

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Alexander Kmeta ("petitioner") requesting the allotment of Channel 250A to Jewett, New York, as the community's first local aural transmission service. Petitioner states that he will apply for the channel, if allotted.

2. We believe the public interest would be served by proposing the allotment of Channel 250A to Jewett, New York, since an interest has been expressed in providing the community with its first local aural broadcast service. Channel 250A can be allotted to Jewett in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.9 kilometers (4.3 miles) north to avoid short-spacings to Station WCZX, Channel 249A, Hyde Park, New York, and Station WSKQ-FM, Channel 250B, New York, New York. [1] Canadian concurrence in the allotment is required since Jewett is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

3. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Jewett, New York	--	250A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **June 8, 1992,** and reply comments on or before **June 23, 1992,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Alexander Kmeta
282 Devoe Avenue
Yonkers, New York 10705
(Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 250A at Jewett are North Latitude 42-19-56 and West Longitude 74-18-45.

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-305

In the Matter of

Amendment of Section 73.202(b), RM-7825
Table of Allotments,
FM Broadcast Stations.
(Lovington, New Mexico)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: April 8, 1992; Released: April 17, 1992

By the Acting Chief, Allocations Branch:

1. At the request of Lea County Broadcasting ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making*, 6 FCC Rcd 6046 (1991), proposing the substitution of Channel 269C3 for Channel 269A at Lovington, New Mexico, and the modification of Station KLEA-FM's license to specify operation on the higher class channel. Petitioner filed comments reiterating its intention to apply for the channel, if allotted. No other comments were received.

2. We believe the public interest would be served by substituting Channel 269C3 for Channel 269A at Lovington, since it could provide the community with a wide coverage area service and also enable Station KLEA-FM to expand its coverage. Channel 269C3 can be allotted to Lovington in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.9 kilometers (4.9 miles) south to accommodate petitioner's desired transmitter site.[1] Mexican concurrence in the allotment has been received since Lovington is located within 320 kilometers (199 miles) of the U.S.-Mexican border. Finally, as proposed, we will modify Station KLEA-FM's license to specify operation on Channel 269C3 in lieu of Channel 269A.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **June 1, 1992**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Lovington, New Mexico	269C3

4. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Lea County Broadcasting for Station KLEA-FM, Lovington, New Mexico, IS MODIFIED to specify operation on Channel 269C3, in lieu of Channel 269A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Lea County Broadcasting, licensee of Station KLEA-FM, is required to submit a rule making fee in addition to the fee required for the applications to effect the change in community of license and/or upgrade.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 269C3 at Lovington are North Latitude 32-52-43 and West Longitude 103-19-12.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-85

In the Matter of

Amendment of Section 73.202(b), RM-7959
Table of Allotments,
FM Broadcast Stations.
(Hampton and Parkersburg, Iowa)

NOTICE OF PROPOSED RULE MAKING

Adopted: April 8, 1992; Released: April 17, 1992

Comment Date: June 8, 1992
Reply Comment Date: June 23, 1992

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by John Linder ("petitioner"). Petitioner, permittee of a new FM station on Channel 255A at Hampton, Iowa, requests the reallotment of Channel 255A from Hampton, Iowa, to Parkersburg, Iowa, and the modification of his construction permit (BPH-910219MK) to specify Parkersburg as the station's community of license. Petitioner states that he will apply for Channel 255A, if allotted to Parkersburg.

2. Petitioner states that Parkersburg, an incorporated community in Butler County, has a 1990 Census population of 1,804 persons. In addition, it is a self-governing community with its own local government, and police and fire services. Parkersburg also has its own post office, businesses, churches, a chamber of commerce and civic organizations such as the Lions and Rotary Clubs.

3. We believe the public interest would be served by proposing the reallotment of Channel 255A from Hampton, Iowa, to Parkersburg, Iowa, since it could provide the community with its first local aural transmission service. Hampton will not be deprived of its sole local transmission service since FM Station KWGG is also licensed to Hampton. Further, neither Hampton nor Parkersburg are located within any Urbanized Area. Finally, the allotment of Channel 255A to Parkersburg is mutually exclusive with its use at Hampton since the communities are located approximately 27 kilometers apart while the Commission's Rules stipulate a minimum distance separation of 115 kilometers for co-channel Class A allotments. Channel 255A can be allotted to Parkersburg in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.5 kilometers (8.4 miles) west to accommodate petitioner's desired transmitter site. [1] As requested, we also propose to modify petitioner's construction permit to specify Parkersburg at its community of license. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 255A at Parkersburg.

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Hampton, Iowa	255A, 285A	285A
Parkersburg, Iowa	--	255A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **June 8, 1992,** and reply comments on or before **June 23, 1992,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

John S. Neely, Esq.
Miller & Miller, P. C.
P. O. Box 33003
Washington, D.C. 20033
(Counsel to petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall

[1] The coordinates for Channel 255A at Parkersburg are North Latitude 42-35-20 and West Longitude 92-57-00.

be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-86

In the Matter of

Amendment of Section 73.202(b), RM-7961
Table of Allotments,
FM Broadcast Stations.
(Paradise and Fort Bragg,
California)

NOTICE OF PROPOSED RULE MAKING

Adopted: April 8, 1992; Released: April 17, 1992

Comment Date: June 8, 1992
Reply Comment Date: June 23, 1992

By the Acting Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Paradise Broadcasting, Inc. ("petitioner"), licensee of Station KZZP(FM), Channel 244A, Paradise, California. Petitioner seeks to amend the FM Table of Allotments by substituting Channel 244B1 for Channel 244A at Paradise and modifying its license for Station KZZP(FM) to specify operation on the higher powered channel. In order to accommodate its request in conformity with the minimum distance separation requirements of the Commission's Rules, petitioner also seeks the substitution of Channel 228B for Channel 244B at Fort Bragg, California,[1] and modification of the license issued to The Henry Radio Company ("Henry Radio") for Station KLLK-FM[2] accordingly. Petitioner states that it will apply for Channel 244B1 if allotted to Paradise, and will reimburse the licensee of Station KLLK-FM at Fort Bragg for the costs associated with its change of channel. *See Circleville, OH*, 8 FCC 2d 159 (1967).

2. In support of its proposal, petitioner states that the requested substitution at Paradise would enable it to provide the community with an expanded coverage area FM broadcast service. Petitioner's proposal includes a statement from Brian J. Henry, a general partner of Henry Radio, stating that Henry Radio consents to the requested substitution proposal for Station KLLK-FM at Fort Bragg.

3. A staff engineering analysis has determined that Channel 244B1 can be substituted for Channel 244A at Paradise at the petitioner's suggested site, located 22.3 kilometers (13.9 miles) north of the community.[3] Channel 228B can be substituted for Channel 244B at Fort Bragg at the authorized site for Station KLLK-FM.[4]

4. The petitioner's modification request conforms with the provisions of Section 1.420(g) of the Commission's Rules. Therefore, we shall propose to modify the facilities of Station KZZP(FM) at Paradise, and Station KLLK-FM at Fort Bragg, California, as requested, without entertaining other expressions of interest.

5. An *Order to Show Cause* to Station KLLK-FM at Fort Bragg is not required in view of its consent to the petitioner's modification request. However, we will serve Henry Radio with a copy of this *Notice*.

6. In view of the above, we consider it appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with regard to the communities listed below, as follows:

	Channel No.	
City	Present	Proposed
Paradise, California	244A, 278B1	244B1, 278B1
Fort Bragg, California	237A, 244B, 253B1	228B, 237A,[5] 253B1

7. IT IS ORDERED That the Secretary of the Commission SHALL SEND a copy of this *Notice* by Certified Mail, Return Receipt Requested, to The Henry Radio Company, 12 West Valley Street, Willits, California, 95490.

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before **June 8, 1992,** and reply comments on or before **June 23, 1992,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

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[1] The distance between the Paradise proposal and Station KLLK-FM at Fort Bragg is 183.6 kilometers (114 miles), whereas the required distance is 211 kilometers (131 miles).

[2] Although Station KLLK-FM currently operates on Channel 244A, its license was modified to specify operation on Channel 244B in MM Docket No. 90-599, effective December 2, 1991. *See* 6 FCC Rcd 5817 (1991).

[3] Coordinates at the petitioner's suggested site for Channel 244B1 are 39-57-29 and 121-42-50.

[4] Coordinates at the authorized site for Station KLLK-FM are 39-27-53 and 123-45-27.

[5] The Commission is currently considering a proposal to substitute Channel 237B1 for Channel 237A at Fort Bragg, California. *See Notice of Proposed Rule Making*, 7 FCC Rcd 1413 (1992), in MM Docket No. 92-25.

Mr. Robb Cheal
Paradise Broadcasting, Inc.
407 West 9th Street
Chico, CA 95928

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-87

In the Matter of

Amendment of Section 73.202(b), RM-7963
Table of Allotments,
FM Broadcast Stations.
(Jonesboro, Arkansas)

NOTICE OF PROPOSED RULE MAKING

Adopted: April 8, 1992; Released: April 17, 1992

Comment Date: June 8, 1992
Reply Comment Date: June 23, 1992

By the Acting Chief, Allocations Branch:

1. The Commission considers herein a petition for rule making filed on behalf of TM Jonesboro, Inc. ("petitioner"), licensee of Station KDEZ(FM), Jonesboro, Arkansas, seeking the substitution of Channel 263C2 for Channel 262A[1] and modification of its license to specify operation on the higher powered channel. Petitioner stated its intention to apply for Channel 263C2, if allotted to Jonesboro, as requested.

2. We believe the public interest would be served by proposing the substitution of Channel 263C2 for Channel 262A at Jonesboro since it could provide an enhanced service to the community. Channel 263C2 can be allotted to Jonesboro at the petitioner's specified site,[2] located 8.1 kilometers (5.0 miles) north of the community, consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules.[3]

3. The petitioner's modification request at Jonesboro is consistent with the provisions of Section 1.420(g) of the Commission's Rules. Therefore, we shall propose to modify the Class A license of Station KDEZ(FM) without entertaining competing expressions of interest in the use of Channel 263C2 at Jonesboro, or requiring the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

4. In view of the above, the Commission believes it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the community listed below, as follows:

	Channel No.	
City	Present	Proposed
Jonesboro, Arkansas	262A, 270C, 300C1	263C2, 270C, 300C1

5. IT IS ORDERED, That the Secretary shall send a copy of this *Notice* to the licensee of Station KOKR(FM), as follows: Newport Broadcasting Company, P.O. Box 989, Blytheville, Arkansas 72316.

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **June 8, 1992,** and reply comments on or before **June 23, 1992,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioners counsel, as follows:

Lawrence Roberts, Esq.
Mark N. Lipp, Esq.
Mullin, Rhyne, Emmons & Topel, P.C.
1000 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20036

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed

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[1] Although petitioner is presently licensed on Channel 261A, it was ordered to relocate to Channel 262A to accommodate the modification of license for Station WASL(FM), Dyersburg, Tennessee, in MM Docket No. 87-563. *See* 4 FCC Rcd 4814 (1989). A construction permit has been issued to Station KDEZ(FM) on Channel 262A (BPH-910717IC).

[2] Coordinates used for Channel 263C2 at Jonesboro are 35-54-35 and 90-42-10.

[3] The proposal for Channel 263C2 is short-spaced to Station KOKR(FM), Channel 264A, Newport, Arkansas, at coordinates 35-36-38 and 91-15-02, and thus dependent upon Station KOKR(FM) moving to Channel 244C2 in accordance with the modification provisions set forth in the *Report and Order* in MM Docket No. 87-563. *See* 7 FCC Rcd 60 (1992). Since the Jonesboro allotment proposal is dependent upon the grant of a license to Station KOKR(FM) on Channel 244C2, the issuance of a license for Station KDEZ(FM) for Channel 263C2 may be withheld until Station KOKR(FM) is authorized to operate on its new channel. The licensee of Station KOKR(FM) will be served with a copy of this *Order*.

Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-88

In the Matter of

Amendment of Section 73.202(b), RM-7962
Table of Allotments,
FM Broadcast Stations.
(Great Falls, Montana)

NOTICE OF PROPOSED RULE MAKING

Adopted: April 8, 1992; Released: April 17, 1992

Comment Date: June 8, 1992
Reply Comment Date: June 23, 1992

By the Acting Chief, Allocations Branch:

1. The Commission has before it for consideration a petition for rule making filed by Staradio Corp. (formerly Portsmouth Broadcasting Corporation) ("petitioner") requesting the substitution of Channel 233C for Channel 233C1 at Great Falls, Montana. Petitioner also requests modification of its construction permit for Station KMON-FM to specify operation on Channel 233C.[1] Petitioner provided an engineering study in support of the proposal and indicated it would file an application for the channel, if allotted.

2. We believe petitioner's proposal warrants consideration because the proposed substitution would provide additional reception service to Great falls and the surrounding area. Channel 233C can be allotted to Great Falls, Montana, in compliance with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules at petitioner's site 43.3 kilometers (26.9 miles) southeast of the community.[2] Since Great Falls is located within 320 kilometers (200 miles) of the U.S. -Canadian border, concurrence of the Canadian government will be requested for this allotment. We shall also propose to modify the construction permit for Station KMON-FM to specify operation on Channel 233C in accordance with Section 1.420(g) of the Commission's Rules and will not accept competing expressions of interest for use of the channel or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

3. We believe the public interest would be served by proposing the allocation of Channel 233C to Great Falls, Montana, since it could provide the community with expanded FM service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's rules, for the community listed below, to read as follows:

City	Channel No. Present	Proposed
Great Falls, Montana	225C1, 233C1, 255C1, 262C1, 291C1, 297C	225C1, 233C, 255C1, 262C1, 291C1, 297C

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **June 8, 1992,** and reply comments on or before **June 23, 1992,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Alan E. Aronowitz
Baraff, Koerner, Olender
and Hochberg, P. C.
5335 Wisconsin, Avenue, N.W., Suite 300
Washington, D.C. 20015-2003

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall

[1] Presently outstanding is a construction permit (BPH-870224IO) for Station KMON-FM which specifies operation on Channel 233C1. Although the construction permit was canceled on March 22, 1991, that action was set aside on June 12, 1991, to enable the subsequently approved receiver to file an application to reinstate the expired construction permit. Upon assumption of control of Station KMON-FM, Staradio filed an application (BPH-910611JK) to replace the expired construction permit, which is pending. Station KMON-FM is licensed to operate on Channel 233C2 (BLH-5661).

[2] The coordinates for Channel 233C at Great Falls are 47-09-34 and 111-00-39.

be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: April 9, 1992

FEE DECISIONS OF THE MANAGING DIRECTOR AVAILABLE TO THE PUBLIC

The Managing Director is responsible for fee decisions in response to requests for waiver or deferral of fees as well as other pleadings associated with the fee collection process. On a monthly basis, a public notice is released and the entire text of these fee decisions is published in the FCC Record.

The decisions are placed in General Docket 86-285 and are available for public inspection. A copy of the decision is also placed in the appropriate docket, if one exists.

The following Managing Director fee decisions are released for public information:

Atkins, T. Kent, d/b/a Atkins Broadcasting - Request for refund of hearing fee for an FM station in Amarillo, Texas - **Denied** (March 2, 1992).

Bradley Broadcasting, L.P. - Request for reconsideration of an application for a new FM station at Idalou, Texas - **Denied** (March 2, 1992).

Cowley County Communications, Inc. - Request for a refund of a filing fee to upgrade its FM station in Winfield, Kansas - **Denied** (March 10, 1992).

Diamond Broadcasting Inc. - Request for refund of rulemaking fee for FM station in Oscelo, Arkansas - **Denied** (March 16, 1992).

Down East Radio Company - Request for refund of hearing fee for a new FM station at Atlantic, North Carolina - **Granted** (March 17, 1992).

Enchantment Media, Inc. - Request for refund of hearing fee for an AM station at Santa Fe, New Mexico - **Granted** (March 6, 1992).

F.W.K. Broadcasting Company (Kinlow, Frederick W.) - Request for waiver of hearing fee in a Comparative Hearing Proceeding - **Denied** (March 19, 1992).

HBA Broadcasting Inc. - Petition for reconsideration of application for a new FM station at Martinez, Georgia - **Dismissed** (March 27, 1992).

Johnson, Andrea L. - Request for refund of hearing fee for a new FM station at Ashtabula, Ohio - **Granted** (March 27, 1992).

Lion's Share Broadcasting (Robert D. Janecek) - Request for Commission to retain the hearing fee for a new FM radio station at Lompoc, California - **Denied** (March 31, 1992).

Macon County Broadcasting, Inc. - Request for acceptance of hearing fee - **Denied** (March 23, 1992).

Merchants Exchange of Portland Oregon - Request for fee waiver for Marine Coast application - **Denied** (March 31, 1992).

MetroCom of Oregon, Inc. - Request for refund of hearing fee for a new UHF television station at Roseburg, Oregon - **Granted** (March 31, 1992).

Pearce Broadcasting Partnership - Request for refund of hearing fee for a new FM radio station at Valley, Alabama - **Granted** (March 31, 1992).

North Bay Broadcasting, Inc. - Request for refund of hearing fee for AM station in Petaluma, California - **Denied** (March 2, 1992).

Oki Industry Co., Ltd. & Nippon Steel Co. - Request for filing fee refund - **Denied** (March 2, 1992).

Peroutek, James M. - Request for reconsideration and reinstatement of application for new station at Waynesville, Missouri - **Granted** (December 3, 1991).

Piketon Communications - Request for reinstatement and acceptance of a hearing fee nunc pro tunc for a new FM station at Piketon, Ohio - **Denied** (March 6, 1992).

Scott County Broadcasting, Inc. - Request for a refund of hearing fee for an applicant for a new FM station at Stamping Ground, Kentucky - **Granted** (March 24, 1992).

Seaira, Inc. - Request for refund of hearing fee for a new FM station at Manahawkin, New Jersey - **Granted** (March 10, 1992).

Sullivan County Radio, Inc. - Request for refund of hearing fee for a new FM station at Monticello, New York - **Granted** (March 6, 1992).

Volunteers in Technical Assistance - Request for reconsideration of Commission decision to waiver fee requirements - **Denied** (March 11, 1992).

Westwind Two (C.K. Adams) - Request for acceptance of hearing fee for a new FM statio at Amarillo, Texas - **Granted** (March 19, 1992).

Whidbey Broadcasting Service, Inc. - Request for refund of hearing fee for AM station in Oak Harbor, Washington - **Granted** (March 6, 1992).

Wilson, James III - Request for refund of hearing fee for a FM station in Dothan, Alabama - **Denied** (March 23, 1992).

NOTE: ANY QUESTIONS REGARDING THIS REPORT SHOULD BE DIRECTED TO THE PREPARER, CLAUDETTE E. PRIDE, CHIEF, FEE SECTION ON (202) 632-0241.

FEDERAL COMMUNICATIONS COMMISSION

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

MAR 2 1992

IN REPLY REFER TO:

James L. Oyster, Esq.
Route 1, Box 203A
Castleton, Virginia 22716

Dear Mr. Oyster:

This is in response to your request for a hearing fee refund submitted on behalf of T. Kent Atkins, d/b/a Atkins Broadcasting (Atkins), licensee of KRGN(FM), Amarillo, Texas.

You state that Atkins tendered its hearing fee on July 9, 1991. You further state that a competing applicant for a new FM station at Amarillo, Williams Broadcasting Group (Williams), failed to pay its hearing fee on July 15, 1991. Atkins then filed a motion to dismiss Williams' application for non-payment of hearing fee on July 17, 1991. You contend that Atkins is now the remaining applicant and no longer subject to the hearing fee, and, accordingly, you now request refund of Atkins' hearing fee.

If only one applicant files a Notice of Appearance and the application contains no outstanding issues and is immediately grantable, the Commission will refund the applicant's hearing fee. See 47 C.F.R. § 1.1111(c)(3). Atkins is neither the sole remaining applicant nor is its application immediately grantable.

As of the date of this letter, Atkins' motion to dismiss Williams' application has not been granted by the Mass Media Bureau. Consequently, Atkins' claim that its application is a "singleton" is premature. Moreover, Atkins' renewal application apparently is not immediately grantable. Review of the Commission's records discloses that Atkins has yet to respond to an August 29, 1990 letter advising the licensee of a deficiency in its renewal application.

Accordingly, your request for refund of Atkins' hearing fee is, at this juncture, denied.

Sincerely,

Marilyn J. McDermett

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

MAR ? 1992

David Honig, Esquire
1800 N.W. 187th Street
Miami, Florida 33056

Dear Mr. Honig:

This is in response to your request, styled as a petition for reconsideration, for acceptance of a fee payment made by Bradley Broadcasting., L.P. (Bradley), applicant for a new FM station at Idalou, Texas.

Bradley's check covering its application fee was returned by its bank due to insufficient funds. However, prior to the return of its check, Bradley wired the funds required to cover its fee requirement to the Commission's correspondent bank which accepted that payment. Subsequently, the Mass Media Bureau dismissed Bradley's application for failure to make a timely fee payment on account of the failure of the check submitted with its application. See letter to David Honig from Dennis Williams, Chief, FM Branch, dated August 29, 1991. You now request that the Commission treat Bradley's substitute payment as having been timely made and reinstate Bradley's application nunc pro tunc.

Section 1.1107(b) of the Commission's rules provides for the dismissal of an application when an associated fee payment instrument is uncollectible. 47 C.F.R. § 1.1107(b). Moreover, in instances where an application must be filed by a date certain, the corrected fee payment together with a refiled application must be submitted on or before the established deadline for filing the application. See Fee Collection Program, 2 FCC Rcd 5987 (1987), reconsidered in part, 3 FCC Rcd 5987, 5991 (1998). In this instance, Bradley's substitute fee payment did not reach the Commission until after the time for filing its application and was not accompanied by its application.

Accordingly, your request must be denied.

Sincerely,

Marilyn J. McDermett

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

MAR 18 1992

OFFICE OF
MANAGING DIRECTOR

April McClain-Delaney, Esq.
Cohn and Marks
1333 New Hampshire Avenue, N.W.
Suite 600
Washington, D.C. 20036-1573

Dear Ms. McClain-Delaney:

This is in response to your request for refund of rulemaking fee submitted on behalf of Diamond Broadcasting Inc. (Diamond), licensee of KPYR(FM), Osceola, Arkansas.

You state that Diamond tendered a $1,565 rulemaking fee upon filing a petition for rulemaking to amend the FM Table of Allotments to allow Diamond to move its community of license from Osceola, Arkansas to Millington, Tennessee. You further state that approximately three months after the petition was filed (October 26, 1990), a clerk called from the FCC's Fee Section and advised that the $1,565 filing fee was not due until the Commission granted your petition for rulemaking. Accordingly, you request a refund of Diamond's fee because it was prematurely filed.

In the Report and Order in MM Docket No. 91-78, the Allocations Branch granted Diamond's petition to reallot Channel 251C from Osceola, Arkansas to Millington, Tennessee, and modified KPYR(FM)'s license. See Report and Order, 6 FCC Rcd 6630 (MMB 1991). In this same action, Diamond was required to submit a rulemaking fee or proof that it had paid the fee for its change of community of license. See id.

Under the circumstances, Diamond's request for refund of the prematurely paid rule making fee is denied because such action has been rendered moot by the Report and Order.

Sincerely,

Marilyn J. McDermett

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

MAR 17 1992

David D. Oxenford, Esquire
Fisher, Wayland, Cooper and Leader
1255 Twenty-Third Street, N.W.
Suite 800
Washington, D.C. 20037-1170

Dear Mr. Oxenford:

This is in response to your request for a refund of the hearing fee filed by Down East Radio Company (Down), successful applicant for a new FM station at Atlantic, North Carolina.

Down and two other applicants filed applications for the station at Atlantic. However, only Down timely submitted its hearing fee, and the Mass Media Bureau dismissed the remaining applicants for failure to pay the hearing fee and granted the license to Down.

Section 1.1111(c)(1) states that broadcast applicants are entitled to a refund whenever the application is granted without being designated for hearing. 47 C.F.R. § 1.1111(c)(1). Accordingly, your request is granted.

A check, drawn in the amount of $6,670.00 and made payable to Down East Radio Company, will be forwarded to you at the earliest practicable time. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0421.

Sincerely,

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

MAR 6 1992

Barry D. Wood, Esquire
Jones, Waldo, Holbrook & McDonough
2300 M Street, N.W.
Suite 900
Washington, D.C. 20037

Dear Mr. Wood:

This is in reference to your request for refund of the hearing fee payment made by Enchantment Media Inc. (Enchantment) in connection with its application for an AM station at Santa Fe, New Mexico.

You state that Enchantment was the only applicant for the station at Santa Fe to survive the Notice of Appearance deadline since the the presiding Administrative Law Judge dismissed the competing applicants for failure to meet the Notice of Appearance deadline. As a consequence, you contend that Enchantment is entitled to a refund of its hearing fee.

The Fee Section returned Enchantment's initial hearing fee payment because its check was made payable to its attorney rather than to the Commission. Enchantment then submitted a second check which it requested the Commission to accept, nunc pro tunc, since it was late filed. See letter from Richard H. Waysdorf, Esquire, dated July 29, 1990; see also Proposals to Reform the Commission's Comparative Hearing Process, 6 FCC Rcd 157, 158 (1990), reconsidered in part, 6 FCC Rcd 3403, 3408 (1991). Subsequently, the Mass Media Bureau designated Enchantment's application for a comparative hearing while its request for reinstatement was still pending. However, the presiding Administrative Law Judge granted Enchantment's application without hearing after dismissing the competing applicants for failure to prosecute, including nonpayment of the requisite hearing fee, and deleting Enchantment's integration proposal pursuant to its motion.

Section 1.1111(c)(3) of the rules states that a hearing fee will be refunded if only one applicant survives the Notice of Appearance deadline and the application is ready for grant upon deletion of any matters requiring resolution. 47 C.F.R. § 1.1111(c)(3). Our review of this matter discloses that only Enchantment survived the Notice of Appearance deadline. Moreover,

since the ALJ's resolved Enchantment's integration proposal by deletion, its application was granted without recourse to adjudication since that action did not require resolution of the merits of Enchantment's proposal. See Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act of 1989, 5 FCC Rcd 3558 (19990), reconsidered in part, 6 FCC Rcd 5919, 5925 (1991). As such, no hearing fee was due from Enchantment.

Accordingly, your request is granted. A check, drawn in the amount of $6,760.00 and made payable to Enchantment Media, Inc., will be forwarded to you at the earliest practicable time. If you have any questions about this refund, please contact the Chief, Fee Section at (202) 632-0421.

Sincerely,

Marilyn J. McDermett

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

MAR 19 1992

OFFICE OF
MANAGING DIRECTOR

Spencer W. Weisbroth, Esq.
Donald E. Martin, P.C.
2000 L Street, N.W.
Suite 200
Washington, D.C. 20036

Dear Mr. Weisbroth:

This is in response to your December 3, 1991 letter, written on behalf of Frederick W. Kinlow d/b/a F.W.K. Broadcasting Company (FWK), regarding the motion for extraordinary relief filed by Scott M. Trentadue (Trentadue) in the Whitewater, Wisconsin comparative proceeding. Your letter will be considered herein as a request for waiver of the hearing fee deadline under section 1.1115 of the rules, 47 C.F.R. § 1.1115(a).

In his motion, Trentadue argues that the presiding Administrative Law Judge lacked authority to accept your client's late-tendered hearing fee (see Memorandum Opinion and Order, FCC 91M-2682, released August 30, 1991), and petitioned the Review Board to reverse his decision. The Review Board agreed and referred the matter to the Managing Director. Memorandum Opinion and Order, 6 FCC Rcd 6540 (Rev. Bd. 1991).

Because Trentadue's and FWK's applications were accepted for filing prior to July 1, 1991, both applicants were required to pay their hearing fees by July 15, 1991. See Report and Order on Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases, 6 FCC Rcd 157, 158 (1990), recon. gtd. in part, 6 FCC Rcd 3403, 3408-3409 ("Appendix A"), 3409 n. 2 (Comparative Hearing); Public Notice, Mimeo No. 13110, released May 15, 1991. Only Trentadue submitted its hearing fee by the required date.

From the inception of the Fee Collection Program, the Commission has taken the position that it has statutory authority to dismiss any application or filing for late payment of any charge. Establishment of a Fee Collection Program, 2 FCC Rcd 947, 957 (1987) (Fees I), citing 47 U.S.C. § 158(c)(2). This aspect of the Fee Collection Program was reinforced in the Comparative Hearing decision. The Commission expressly stated that, for those applicants required to pay the hearing fee by July 15, 1991, "[f]ailure to make the hearing fee payment in a timely manner will result in the dismissal of the underlying pending application." 6 FCC Rcd at 3409 ("Appendix A") (emphasis in original).

The Managing Director is delegated authority to act upon your request for waiver of hearing fee. 47 C.F.R. § 0.231(c). However, waiver of a hearing fee deadline may be granted only in specific cases where good cause is shown and where waiver would promote the public interest. 47 C.F.R. § 1.1115(a). Upon consideration of your request, we conclude that you have failed to show good cause for waiver of the July 15, 1991 hearing fee deadline or that waiver in this instance would promote the public interest.

Your only argument is that FWK was not represented by counsel and did not learn of the change in the deadline for payment of hearing fees. We find this unpersuasive; a comparative proceeding should not be ground to a halt simply because one of the applicants chose not to be represented by counsel and consequently missed a filing deadline.

Accordingly, your request for waiver of hearing fee is denied. Because your underlying application will be dismissed by the ALJ, your hearing fee will be refunded to you. See 47 C.F.R. § 1.1111(b). A check for $6,760, payable to Frederick W. Kinlow d/b/a/ F.W.K. Broadcasting Company, will be forwarded to you at the earliest practicable time.

Sincerely,

Marilyn J. McDermett

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

MAR 19 1992

James L. Oyster, Esquire
Route 1, Box 203A
Castleton, Virginia 22716

Dear Mr. Oyster:

This is in response to your request for acceptance, nunc pro tunc, of the hearing fee filed by C. K. Adams d/b/a Westwind Two (Westwind), applicant for a new FM station at Amarillo, Texas.

You state that Westwind's hearing fee was sent via Express Mail to the Mellon Bank in Pittsburgh, Pennsylvania, the Commission's correspondent bank for fee collections, on Saturday, July 13, 1991. Although the Express Mail package arrived July 14, one day prior to the July 15 filing deadline, the Post Office refused to make delivery because Bank personnel were unavailable to sign a receipt for delivery. Instead, the Post Office placed a postcard notification in Mellon's Post Office Box stating that the package was available for pick-up. However, the pick-up did not occur until Tuesday, July 16, one day after the filing deadline. Consequently, Westwind's hearing fee was treated as late filed and returned.

You ask for acceptance of Westwind's filing fee because the hearing fee was late filed through no fault of the applicant. Rather, you suggest that the package containing the fee payment was timely mailed and, in fact, did arrive at Mellon's Post Office Box on time, but was not picked up by the Bank until three days later when the filing deadline had already passed.

Based on the foregoing, including Westwind's Express Mail receipt plainly evidencing Express Mail's attempted delivery prior to the date for filing the hearing fee, and on our own internal review of the circumstances surrounding this matter, we have concluded that Westwind's hearing fee should be treated as if timely filed.

Accordingly, Westwind's request for acceptance of its hearing fee, nunc pro tunc, is granted. Westwind is directed to resubmit its hearing fee package, including a copy of this letter, within thirty days from the date of this letter.

Sincerely,

Marilyn J. McDermett

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

MAR 27 1992

James L. Winston, Esquire
Rubin, Winston, Diercks & Harris
1730 M Street, N.W.
Washington, D.C. 20036

Dear Mr. Winston:

Pursuant to your request, the petition for reconsideration of the dismissal of EBA Broadcasting Inc.'s application for a new FM station at Martinez, Georgia is hereby dismissed.

Sincerely,

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

MAR 27 1992

Margot Polivy, Esq.
Renouf & Polivy
1532 Sixteenth Street, N.W.
Washington, D.C. 20036

Dear Ms. Polivy:

This is in response to your request for refund of hearing fee submitted on behalf of **Andrea L. Johnson** (Johnson), the successful applicant for a new FM radio station at Ashtabula, Ohio.

You state that Johnson paid the $6,760 hearing fee on July 12, 1991. You also state that although two applicants were designated for hearing, the other applicant, James T. Embrescia, dismissed his application prior to the deadline for filing Notices of Appearance. That action left Johnson as the sole remaining applicant. You further state that Johnson's application was immediately grantable. By Order, FCC 92M-189, released February 12, 1992, the presiding Chief Administrative Law Judge granted Johnson's application, there being no outstanding qualifying issues against her. You now request refund of the hearing fee.

If only one applicant files a Notice of Appearance and that single remaining applicant is immediately grantable, that applicant is entitled to a refund of the hearing fee. See 47 C.F.R. § 1.1111(c)(3). Because the other applicant in the proceeding dismissed his application prior to the Notice of Appearance deadline, and because there were no outstanding qualifying issues against Johnson's application, she became the single remaining applicant and was immediately grantable. Johnson's request for hearing fee refund therefore will be granted.

Accordingly, a check for $6,760, payable to Andrea L. Johnson, will be forwarded to you at the earliest practicable time. If you have any questions about this refund, please call Chief, Fee Section at (202) 632-0241.

Sincerely,

Marilyn J. McDermett

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

MAR 3 1 1992

David Tillotson, Esquire
Arent Fox Kintner Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339

Dear Mr. Tillotson:

This is in response to your request that the Commission retain the hearing fee submitted on behalf of Robert D. Janecek d/b/a Lion's Share Broadcasting (Janecek), applicant for a new FM radio station at Lompoc, California.

Janecek tendered his hearing fee on July 15, 1991 pursuant to the new procedures applicable to the payment of hearing fees. The applicant was designated for hearing with other mutually exclusive applications. Prior to the Notice of Appearance deadline, the applicant entered into and filed a settlement agreement which contemplated universal settlement of the Lompoc, California proceeding. Pursuant to the terms of the settlement agreement, Janecek's application and that of other applicants would be dismissed. Accordingly, you requested that Janececk hearing fee be refunded pursuant to § 1.1111 (c) of the Commission's Rules. By letter of October 18, 1991, the Managing Director granted your request for fee refund.

However, on November 5, 1991, before the refund check could be issued, you advised the Commission that the settlement agreement providing for the dismissal of Janecek's application had been terminated, and consequently, Janecek intended to proceed with his application. Therefore, you requested that the prior request for refund of hearing fee be withdrawn and that the Commission retain the fee.

As of this date, no refund has yet been issued to Janecek in response to your previous request, and in light of your current request that the Commission retain the fee, no refund will be issued.

Sincerely,

Marilyn J. McDermett

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

MAR 2 3 1992

Dennis F. Begley, Esquire
Reddy, Begley & Martin
2033 M Street, N.W.
Washington, D.C. 20036

Dear Mr. Begley:

This is in response to your request for acceptance, nunc pro tunc, of a hearing fee filed by Macon County Broadcasting, Inc. (MCBI), successor in interest to Lafayette Broadcasting Company, Inc., in connection with its application for a new FM station in Lafayette, Tennessee.

You indicate that although a Public Notice, released November 4, 1991, stated that a hearing fee in this proceeding was to be paid no later than January 7, 1992, MCBI did not pay the fee until February 4, 1992. You further state that counsel for MCBI discovered the November 4th Public Notice on February 4, 1992.

You argue that the Commission's procedure of releasing a Public Notice that lists mutually exclusive applicants, and establishes dates for filing petitions to deny and for paying the hearing fee, does not provide applicants with "adequate notice" because "the applicant is not personally served with notice of the hearing fee deadline, nor is the hearing fee payment established in the Federal Register." You also complain that MCBI was not personally served with a notification that its application had been accepted for filing. You submit that the Commission's procedure "does not comport with procedural due process, and potentially may result in MCBI being denied its statutory right to a hearing . . . . "

From the inception of the Fee Collection Program, the Commission has taken the position that it has the authority to dismiss any application or filing for late payment of any charge. Establishment of A Fee Collection Program, 2 FCC Rcd 947, 957 (1987) (Fees I), citing 47 U.S.C. § 158 (c)(2). Section 8 (c)(2) of the Communications Act authorizes the Commission to dismiss any application or filing for failure to pay any fee in a timely manner. In Fees I, we specifically addressed the merits of imposing penalties for late payments, weighing the concerns of applicants that might be denied "an opportunity to compete for the right to provide a communications service" against "the processing costs of a cash management system that would be required to maintain an extensive billing and collection operation." 2 FCC Rcd at 956. We concluded that the revised policy "represent[ed] a workable and equitable method of dealing with late . . . payments . . . ." Id.

Moreover, in adopting the revised policy for payment of hearing fees, the Commission unambiguously stated that it would require applicants with mutually exclusive broadcast applications to file their hearing fees by a date established in a Public Notice prior to designation for hearing. See Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases, 6 FCC Rcd 157, 158 (1990). Upon reconsideration, the Commission reiterated that the "hearing fee payments will be triggered by the Public Notice announcing the acceptance of an application for filing" and clarified the fact "[t]hat Public Notice will also specify a date for the payment of a hearing fee." 6 FCC Rcd 3403 (1991). Here, in accordance with the Commission's revised policy, a Public Notice established that a hearing fee was to be paid in this proceeding no later than January 7, 1992. Thus, we are satisfied that interested parties, including MCBI, had sufficient notice of their obligations to file their hearing fees by January 7, 1992.

The Commission's rules place the burden of compliance with the fee requirements on the applicant. Moreover, the rules do not provide for nunc pro tunc acceptance of a hearing fee that is late due to reasons within an applicant's control. Rather, the Commission's rules explicitly limit the circumstances under which a late fee payment will be accepted. See 47 C.F.R. § 1.1114 (a)(2). The circumstances surrounding MCBI's failure to file timely its hearing fee do not provide an adequate basis for acceptance of its late fee payment.

In view of the foregoing ruling, your request for acceptance of your hearing fee, nunc pro tunc, is denied. Therefore, a check, drawn in the amount of $6,760.00 and payable to Macon County Broadcasting, Inc., will be sent to you at the earliest practicable time. Further, MCBI's application will be dismissed. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0241.

Sincerely,

Marilyn J. McDermett

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

MAR 3 1 1992

Mr. Mark Copeland, Manager
Merchants Exchange of Portland Oregon
200 S.W. Market Street
Portland, Oregon 97201

Dear Mr. Copeland:

This is in response to your fee waiver request submitted on behalf of the Merchants Exchange of Portland Oregon (Merchants Exchange). You made your request in the cover letter accompanying your Marine Coast Application, FCC Form 155, and $70.00 fee (fee type code PBM).

You contend that, although there is no exemption for fees in the Maritime Mobile Radio Service, you believe that the public safety and emergency radio services that you provide should make the Merchants Exchange eligible for a fee waiver.

In crafting the legislation which underlies the Commission's Fee Collection Program, Congress specifically considered and exempted certain radio services and applicants from the fee requirements. See Conference Report, H.R. Rep. No. 453, 99th Cong., 1st Sess. 39-42, 423, 434 (1985). The Maritime Mobile Radio Service was not, however, included among the exempted radio services. See Report and Order on the Establishment of a Fee Collection Program, 2 FCC Rcd 947, 958 (1987).

Despite your contributions to public safety, we are unable to make an exception that would render the Merchants Exchange eligible under the Public Safety Radio and Special Emergency Radio Services, which are exempted from the payment of fees. Those services are defined based upon the frequency involved and upon other special requirements which are subject to strict definition and not upon the mere fact that the particular radio services may have public safety implications. See id., 2 FCC Rcd at 958, 983 n. 61; see also 47 C.F.R. §§ 90.15 and 90.33.

Accordingly, your request for a fee waiver on behalf of the Merchants Exchange of Portland Oregon is denied.

Sincerely,

Marilyn J. McDermett

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

MAR 3 1 1992

Ann C. Farhat, Esq.
Bechtel & Cole, Chartered
1901 L Street, N.W.
Suite 250
Washington, D.C. 20036

Dear Ms. Farhat:

This is in response to your request for a hearing fee refund submitted on behalf of MetroCom of Oregon, Inc. (MetroCom), applicant for a new UHF television station on Channel 36 at Roseburg, Oregon.

You state that MetroCom tendered its hearing fee on July 15, 1991, as its application was mutually exclusive with the application of KMTR, Inc. (KMTR). You also state that KMTR filed a petition for rulemaking to allot an additional UHF channel, Channel 46, to Rosenburg. On July 16, 1991, the Chief, Allocations Branch, granted the Channel 46 allotment and modified KMTR's application for specification of Channel 46. See Amendment of the Table of Allotments, Roseburg, Oregon, 6 FCC Rcd 4369 (MMB 1991). You further state that this action removed the mutual exclusivity of the MetroCom and KMTR applications and obviated the need for a comparative hearing.

Broadcast applicants that pay the hearing fee before the release of an order designating the application for hearing are entitled to a refund if the application is granted without being designated. In the instant situation, MetroCom tendered its hearing fee in a timely fashion and its application was granted prior to the release of a hearing designation order. See 47 C.F.R. § 1.1111(c)(1).

Accordingly, your request for refund of MetroCom's hearing fee is granted. A check for $6,760, payable to MetroCom of Oregon, Inc., will be mailed to you at the earliest practicable time. If you have any questions about this refund, please call Chief, Fee Section at (202) 632-0241.

Sincerely,

Marilyn J. McDermett

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

Richard S. Wright, Esq.
1001 Bridgeway
Sausalito, California 94965

Dear Mr. Wright:

This is in response to your "Comparative Hearing Fee Refund" submitted on behalf of North Bay Broadcasting, Inc. (North Bay), renewal applicant for the license to radio broadcast station KTOB(AM), Petaluma, California.

You state that North Bay tendered its $6,760 hearing fee on July 15, 1991 (File No. BR-900817UG). You further state that Ms. Edith Owens (File No. BP-900815AC), a mutually exclusive competing applicant for a new AM station at Petaluma, California, was dismissed (for failure to pay the hearing fee in a timely manner). See 8910-MME. You now request refund of North Bay's hearing fee on the grounds that no hearing will be required in this proceeding.

If only one applicant pays the required hearing fee, that single remaining applicant will be entitled to a refund of the hearing fee upon request if it is immediately grantable. See 47 C.F.R. §1.1111(c)(3). North Bay was the only applicant to pay the hearing fee by the required date. However, the question of whether North Bay's renewal application is immediately grantable remains to be determined by the Mass Media Bureau. Under the circumstances, refund of North Bay's hearing would be premature.

Accordingly, your request for refund of hearing fee is, at this time, denied.

Sincerely,

Marilyn J. McDermett

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

MAR 2 1992

Sanae Reed, General Manager
Zacta International Corporation
6480 Dowel Drive
Simi Valley, California 93063

Dear Sanae Reed:

This is in response to your request for the fee refund submitted on behalf of **Oki Industry Co., Ltd.** (Oki) for $155.00 and Nippon Steel Co., Ltd. (Nippon Steel) for $35.00.

You state that Oki filed an application for Model PS24B-3U on April 18, 1991 with payment of the $155.00 fee. You further state that this application was lost and that you resubmitted the application with another $155.00 fee on May 16, 1991. You now request refund of the April 18, 1991 application fee. In addition, you request a refund of the $35.00 Grantee Code Fee for Nippon Steel.

Your May 16, 1991 application was processed that same day under Fee Control No. 9105168145623003. Your April 18, 1991 application was lost for a period of time, found, then processed on August 14, 1991 under Fee Control No. 9108148145626001. When you submitted your application on May 16, 1991, you were required to submit a stamped copy of the original submission, without a fee. Instead, you resubmitted the application with another fee.

From the beginning of the Fee Collection Program, the Commission has stated that it will return fees in certain limited circumstances only. See Establishment of a Fee Collection Program, 2 FCC Rcd 947, 949 (1987) (Fees I). In Fees I, we specifically addressed the problem of lost applications. We stated that, "where an applicant discovers that the Commission has lost its application, an additional fee will not be required if the applicant submits a copy containing the FCC receipt stamp." Id. The delayed processing of your April 18, 1991 application indicates that this application was lost (because it was misplaced) by the Commission, not lost in the mail. Under such circumstances, you should not have tendered another fee and there is no provision under the rules for a refund.

With respect to your request for refund of the $35.00 Grantee Code Fee, our rules do not provide for refund of an incorrrectly tendered fees once it is processed. Accordingly, your request for this fee refund is denied also.

Sincerely,

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

MAR 3 1 1992

Catherine M. Withers, Esq.
Gardner, Carton & Douglas
1301 K Street, N.W.
Suite 900, East Tower
Washington, D.C. 20005

Dear Ms. Withers:

This is in response to your request for refund of hearing fee submitted on behalf of **Pearce Broadcasting Partnership** (Pearce), the successful applicant for a new FM radio station at Valley, Alabama.

You state that Pearce paid the $6,760 comparative hearing fee on July 15, 1991. You further state that Pearce's application was designated for hearing with a contingent environmental issue specified against it. See Hearing Designation Order, DA 91-1204, released October 9, 1991 (HDO). On October 22, 1991, prior to the deadline for filing Notices of Appearance, Pearce joined in the filing of a settlement agreement which contemplated the universal settlement of the Valley proceeding and grant of Pearce's application.

You also state that the following day Pearce filed an amendment providing the necessary environmental information requested by the HDO. Subsequently, the presiding Administrative Law Judge (ALJ) deleted the environmental issue against Pearce, approved the settlement, and granted Pearce's application. See Memorandum Opinion and Order, FCC 91M-3392, released December 5, 1991.

The Commission's Rules provide for refund of the hearing fee in cases where a settlement agreement is filed by the Notice of Appearance deadline and the remaining applicant is immediately grantable or if matters specified in the designation order can be deleted. See 47 C.F.R. §1.1111(c)(4). In the instant case, the settlement agreement was filed in a timely manner and the contingent environmental issue specified against Pearce's application was deleted by the ALJ.

Accordingly, your request for a fee refund is granted. A check for $6,760, payable to Pearce Broadcasting Partnership, will be forwarded to you at the earliest practicable time. If you have any questions about this refund, please call Chief, Fee Section, at (202) 632-0241.

Sincerely,

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

DEC 3 1991

Mr. James M. Peroutek
320 N. Center
Mankata, Kansas 66956

Dear Mr. Peroutek:

This is in response to your request for reconsideration and reinstatement of your application for a new station at Waynesville, Missouri.

You state that after discussing the payment process with a management firm, it was decided that a credit union's official draft would best guarantee the fee payment for your application. Accordingly, you state that this draft was made payable to you and the FCC (as actually appears on the check: "Jim Peroutek & Federal Communications Commission"), then endorsed by you so that the Commission had the sole right to payment. The check was returned. You now request reinstatement of your application "on the date and time initially submitted." You also state that you will pay your application fee in whatever form the Commission considers acceptable.

Section 1.1108(a) of the Commission's rules requires that fee payment instruments be made payable only to the Federal Communications Commission. Although your fee payment instrument was made out jointly to you and the Commission, your endorsement of the draft and submission with your application gave the Commission the right to negotiate the instrument. Accordingly and under these unique circumstances, we are reinstating your application nunc pro tunc, and resubmitting your original draft to our bank for collection.

Sincerely,

Marilyn J. McDermett
Associate Managing Director
for Operations

Accordingly, your request for a fee refund is granted. A check for $6,760, payable to Pearce Broadcasting Partnership, will be forwarded to you at the earliest practicable time. If you have any questions about this refund, please call Chief, Fee Section, at (202) 632-0241.

Sincerely,

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

MAR 6 1992

T. Michael Jankowski, Esquire
Collier, Shannon & Scott
3050 K Street, N.W.
Washington, D.C. 20007

Dear Mr. Jankowski:

This is in response to your request for acceptance of a hearing fee filed by **Piketon Communications and** reinstatement, nunc pro tunc, of its application for a new FM station at Piketon, Ohio.

You state that Piketon and another applicant filed competing applications for a station at Piketon. However, Piketon's application was dismissed for failure to timely file a hearing fee by July 15, 1991, pursuant to a change in the Commission's rules concerning comparative hearing procedures.

You contend that the Commission failed to provide adequate notice of an amendment to its rules that competing applicants for broadcast stations would be required to submit their hearing fees in advance of an order designating their application for a comparative hearing. Moreover, you argue that the staff should have examined the circumstances surrounding Piketon's late filing and reinstated Piketon's application since resolution of the competing applications even by a comparative hearing would have burdened the Commission's resources only minimally.

At the outset of its rulemaking to expedite the selection of broadcast licensees, the Commission proposed a requirement for early payment of hearing fees. See Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases (Notice of Proposed Rulemaking), 55 Fed. Reg. 28063 (July 9, 1990). In adopting its proposed requirement, the Commission unambiguously stated that it would require the submission of hearing fees for all pending mutually exclusive applications by a date certain. See Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases, 56 Fed. Reg. 787, 787-788, (January 9, 1991) reconsidered in part, 56 Fed. Reg. 25635, (June 5, 1991). In its reconsideration, the Commission specifically established July 15, 1991, as the date by which such hearing fees were to be filed. 56 Fed. Reg. at 25638. Thus, we are satisfied that interested

parties, including Piketon, had sufficient notice of their obligation to file their hearing fees by July 15, 1991.

Finally, neither the circumstances surrounding Piketon's failure to timely file its hearing fee nor the extent of burden on the Commission's resources to dispose of its application on the merits constitutes sufficient cause for reinstatement of an application, nunc pro tunc.

Accordingly, your request is **denied**.

Sincerely,

Marilyn J. McDermett

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

MAR 24 1992

John S. Neely, Esquire
Miller & Miller
1990 M Street, N.W.
Suite 760
Washington, D.C. 20036

Dear Mr. Neely:

This is in response to your request for a refund of the hearing fee filed by Scott County Broadcasting, Inc. (Scott), successful applicant for a new FM station at Stamping Ground, Kentucky.

Scott and one other applicant filed applications for the station at Stamping Ground, Kentucky. However, the applicants entered a settlement agreement, and the Mass Media Bureau approved the settlement agreement and awarded the station at Stamping Ground to Scott, prior to designation for hearing.

Section 1.1111(b)(1) states that a broadcast applicant is entitled to a refund whenever its application is granted without being designated for hearing. 47 C.F.R. § 1.1111(b)(1). Accordingly, your request is granted.

A check, drawn in the amount of $6,760.00 and made payable to Scott County Broadcasting, Inc., will be forwarded to you at the earliest practicable time. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0421.

Sincerely,

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

MAR 10 1992

OFFICE OF
MANAGING DIRECTOR

Ms. Kathryn R. Schmeltzer, Esquire
Fisher, Wayland, Cooper & Leader
1255 23rd Street, N.W.
Suite 800
Washington, D.C. 20037

Dear Ms. Schmeltzer:

This is in response to your request for a refund of the hearing fee submitted by Seaira, Inc. (Seaira), former applicant for a new FM station at Manahawkin, New Jersey.

Seaira and the competing applicants for the Manahawkin station filed a settlement agreement with the Mass Media Bureau following their designation for a comparative hearing, but before the Hearing Designation Order (HDO) was released. The HDO dismissed two applicants, both parties to the settlement agreement, including Press Broadcasting Company, the applicant proposed in the settlement agreement as licensee at Manahawkin. Pursuant to a petition by the applicants, the presiding Administrative Law Judge (ALJ) substituted Press for an applicant designated for hearing, approved the settlement agreement in all material respects, and granted Press' application. Finally, the ALJ remanded the proceeding to the Bureau for further action regarding the status of the remaining applicant dismissed in the HDO, but a party to the settlement agreement.

A hearing fee will be returned if a settlement agreement provides for the dismissal of all but one of the applicants, the application is ready for grant, and the ALJ is not required to adjudicate the merits of an applicant's post designation amendment. See 47 C.F.R. §§ 1.1111(c)(4),(5). We view the substitution of Press for another applicant as a procedural device employed by the ALJ to restore Press for consideration as the licensee, consistent with the terms of the settlement agreement. In substituting Press, the ALJ did no more than permit another applicant, already subject to dismissal under the settlement agreement to voluntarily withdraw and then grant that applicant's request to include Press in the comparative proceeding in its place. As such, the ALJ's actions with regard to Press did not constitute an adjudication of the merits of any post designation amendment. Nor did the ALJ's remand of the settlement agreement to the Bureau amount to anything more than administrative housekeeping because the ALJ had earlier granted Press' application and dismissed the remaining applicants designated for hearing.

Accordingly, your request is granted. A check, drawn in the amount of $6,760.00 and made payable to Seaira, Inc., will be forwarded to you at the earliest practicable time. If you have any question concerning this matter, please contact the Chief, Fee Section at (202) 632-0421.

Sincerely,

Marilyn J. McDermett

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

MAR 6 1992

Wayne D. Johnsen, Esquire
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Dear Mr. Johnsen:

This is in response to your request for refund of the hearing fee submitted by Sullivan County Radio, Inc. (Sullivan), former applicant for a new FM station at Monticello, New York.

You state that Sullivan timely filed its hearing fee and then entered a settlement agreement concerning the appropriate licensee at Monticello, prior to designation of the competing applications for hearing.

Section 1.1111(c)(2) of the Commission's rules provides for the return of a hearing fee if the competing applicants enter a settlement agreement before issuance of a hearing designation order in the matter, 47 C.F.R. § 1.1111(c)(2).

Accordingly, your request is granted. A refund, made payable to Sullivan County Radio, Inc. and drawn in the amount of 6,760.00, will be forwarded to you at the earliest practicable time. If you have any questions concerning this matter, please contact the Chief, Fee Section at (202) 632-0241.

Sincerely,

Marilyn J. McDermett

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

MAR 11 1992

OFFICE OF
MANAGING DIRECTOR

Henry R. Norman, President
1815 N. Lynn Street
Suite 200
Arlington, Virginia 22209-8438

Dear Mr. Norman:

This is in response to your petition for reconsideration of our denial of a request for waiver of the fee requirement filed by **Volunteers in Technical Assistance (VITA)** in connection with its application for a low-earth orbit satellite system (LEO). See letter to Henry R. Norman from Marilyn J. McDermett, dated November 25, 1991.

You request reconsideration on the ground that the Managing Director may have failed to specifically consider the services that VITA proposes to provide, and, therefore, should not have simply concluded that VITA's non-profit status was an insufficient basis for a fee waiver. You contend that a waiver to VITA is justified because its contemplated medical, educational, disaster relief and research services are similar in nature to the public safety and emergency radio services that Congress explicitly exempted from fee payments. You believe that these service offerings together with VITA's non-profit status provide ample justification for the requested waiver. You also propose, however, that VITA pay some portion of the basic cost of processing its application.

In a recent decision, the Commission considered VITA's petition for exemption from the fee requirement due to its non-profit status and its underlying service proposal. See Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act of 1989, 5 FCC Rcd 3558 (1990), reconsidered in part, 6 FCC Rcd 5919, 5924 (1991). There, the Commission rejected VITA's request notwithstanding its specific consideration of the entity's non-profit status and VITA's contention that the similarity of its services to those exempted by Congress warranted a dispensation from the fee requirement. The Commission specifically held that "we do not think that [VITA's] services are so analogous to exempted services that they should be covered." Id.

On reconsideration, we cannot find that VITA is entitled to a waiver of the fee requirement. Congress has instructed the Commission to narrowly construe its waiver authority. See Conference Report to accompany H.R. Rep. No. 453, 99th Cong., 1st Sess. 423 (1985). As explained above, the Commission rejected

VITA's petition for a blanket waiver and in so doing decided that VITA's proposed services, the services upon which you now base the instant petition, were not sufficiently similar to exempt services to justify an exemption. In the absence of a direct correlation between VITA's proposals and the exempt safety and emergency services, a grant of a waiver to VITA would require similar waivers for the many other groups having equally laudable purposes. Consequently, we cannot find that a fee waiver to VITA would comply with Congress' direction to narrowly restrict our waiver authority. See 6 FCC Rcd at 5926.

Finally, the Schedule of Charges represents Congress' determination of how costs incurred by the Commission should be recovered. Congressional revisions to the Commission's Schedule of Fees have included provisions for reduced fees for certain categories of applicants proposing multiple facilities. See Omnibus Budget Reconciliation Act of 1989, Public Law No. 101-239, 103 Stat. 2106, codified at 47 U.S.C. § 158. Examples of these new provisions may be found at 47 C.F.R. § 1.1105(2)(e), (4)(e), (5)(f), 6(e), (7)(e), (8)(e), 10(c), (11)(d), (12)(c), and (13)(c). We do not believe Congress intended that the Commission should engage in ad hoc fee determinations following its recent adjustments to the Fee Schedule.

Accordingly, your petition is denied.

Sincerely,

Andrew S. Fishel
Managing Director

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

MAR 6 1992

Robert D. Primosch, Esquire
Fletcher, Heald & Hildreth
1225 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036-2679

Dear Mr. Primosch:

This is in response to your request for a refund of the hearing fee filed by Whidbey Broadcasting Service, Inc. (Whidbey), licensee of station KJTT(AM).

Whidbey filed an application to upgrade KJTT's power and another applicant filed to operate a new station on the same channel. Whidbey timely filed its hearing fee, but, prior to designation of its application for hearing, the competing applicant withdrew and the Mass Media Bureau granted its application.

Section 1.1111(c)(1) states that broadcast applicants are entitled to a refund whenever the application is granted without being designated for hearing. 47 C.F.R. § 1.1111(c)(1). Accordingly, your request is granted.

A check, drawn in the amount of $6,670.00 and made payable to Whidbey Broadcasting Service, Inc., will be forwarded to you at the earliest practicable time. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0421.

Sincerely,

Marilyn J. McDermett

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

MAR 23 1992

Gerald Stevens-Kittner, Esquire
Arter & Hadden
1801 K Street, N.W. Suite 400K
Washington, D.C. 20006-1301

Dear Mr. Stevens-Kittner:

This is in response to your request for refund of the hearing fee of $6,760.00 submitted by **James Wilson** III, applicant for a new FM station on Channel 267, Dothan, Alabama.

You request a refund because James Wilson III was the only applicant to file a Notice of Appearance and pay his hearing fee following the release of a Hearing Designation Order (HDO), in which six applications were designated for hearing. However, in reviewing the docket in this proceeding, we note that an air hazard issue was designated against Wilson's application. Hearing Designation Order, 5 FCC Rcd 7603 (MMB 1990). We further note that this issue was ultimately resolved in Wilson's favor by an Order, FCC 91M-729 (ALJ, released February 28, 1991), and the grant of Wilson's application was appropriately conditioned.

Commission Rule 1.1111 (b)(3) provides that a refund of a hearing fee will be made "when only one applicant files a Notice of Appearance and pays the hearing fee . . . if [the application] is immediately grantable or if all issues specified in the designation order and requiring resolution can be deleted." 47 C.F.R. § 1.1111 (b)(3) (emphasis supplied). The Commission has specifically considered whether to permit the refund of a hearing fee in circumstances in which the sole surviving applicant must resolve an outstanding air hazard issue. See Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act of 1989 (Fees II), 5 FCC Rcd 3558 (1990), reconsidered in part, 6 FCC Rcd 5919 (1991). There, the Commission decided to retain the fee requirement whenever an air hazard issue is resolved on the merits. Id. at paras. 46-48. In the instant case, the Administrative Law Judge adjudicated the merits of the air hazard issue that had been designated against Wilson. Accordingly, your request for a refund must be denied.

Sincerely,

Marilyn J. McDermett
Associate Managing Director
for Operations

FCC 92-94
38357

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Amendment of Part 22 of the Commission's Rules to provide for filing and processing of applications for unserved areas in the Cellular Service and to modify other cellular rules	)	CC Docket No. 90-6

Second Report and Order

Adopted: March 12, 1992 **Released:** April 9, 1992

By the Commission:

INTRODUCTION

1. In this Second Report and Order, we amend the rules governing the licensing of stations in the Domestic Public Cellular Radiotelephone Service to require a new method for determining the Cellular Geographic Service Areas (CGSAs) of cellular systems. We modify the authorizations of existing cellular systems to redefine the boundaries of their CGSAs in accordance with the new method. Additionally, we amend the rules to allow licensees of cellular systems to expand the CGSAs of these systems within their markets during the five year fill-in period without prior Commission authorization. Instead of filing applications for authorization of such expansion as is currently required, licensees will be required only to notify the Commission of the added or modified cells.[1] Finally, we clarify certain administrative details concerning application filing requirements for unserved areas.

2. We believe that our actions herein will serve the public interest by creating opportunities to establish new cellular mobile telephone systems in unserved areas, and by reducing the burden of federal regulation on existing cellular mobile telephone service providers. Construction and operation of new cellular systems spurs economic activity, by stimulating demand for cellular equipment, construction services and telecommunications services, and by

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1 Notifications of CGSA expansion will be subject to the same requirements regarding FAA approval of antenna structures, environmental effects, and international coordination that currently apply to notifications of minor modifications to cellular systems that do not expand the CGSA. See §22.117(b) of the Commission's rules, 47 CFR 22.117(b).

increasing the productivity and efficiency of the business activities of cellular mobile telephone subscribers. Our adoption of a simple, straightforward method for determining cellular system coverage will facilitate and expedite authorization of new cellular systems in areas of the country that remain unserved. Furthermore, by allowing cellular carriers to expand systems without obtaining prior authorization, we are significantly reducing the paperwork burden on cellular carriers, a cost that is partially reflected in rates paid by subscribers.

BACKGROUND

3. The Commission initiated this proceeding by inviting public comment on proposed rules[2] for acceptance and processing of applications for authority to operate new cellular systems in unserved areas.[3] On September 26, 1991, we adopted a First Report and Order and Memorandum Opinion and Order on Reconsideration ("First Report")[4] that, among other things, established rules and procedures governing the filing of such unserved area applications. On that same day, we adopted a Further Notice of Proposed Rule Making ("Further Notice")[5], requesting comment on four additional proposals and related issues. Specifically, we proposed to adopt rules to determine the boundaries of CGSAs by the use of a mathematical formula, to allow licensees to expand their CGSA within their market during the five year fill-in period without prior authorization (i.e., by notification), to limit payments received for settlement of mutually exclusive applications and for withdrawal of petitions, and to limit the assignment or transfer of cellular facilities prior to commencement of service.

4. We initially believed that we could accept unserved area applications pending action on all of these proposals. However, on December 10, 1991, the Cellular Telecommunications Industry Association ("CTIA") filed a motion requesting a temporary suspension of the filing dates for updated system information and unserved applications. CTIA points out that if the method by which cellular CGSAs are determined is changed, the updated system information would become erroneous and would have to be resubmitted. Examination of the comments filed in response to the Further Notice reveals that the majority of parties also believe that the Commission should issue a final decision on the CGSA determination proposal before accepting unserved area applications.

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2 Notice of Proposed Rule Making in CC Docket No. 90-6, FCC 90-14, 5 FCC Rcd 1044 (1990)

3 "Unserved areas" are geographical areas that are not within any CGSA on a frequency block.

4 First Report and Order and Memorandum Opinion and Order on Reconsideration in CC Docket No. 85-388 and 90-6, FCC 91-306, 6 FCC Rcd 6185 (1991).

5 Further Notice of Proposed Rule Making in CC Docket No. 90-6, FCC 91-311, 6 FCC Rcd 6158 (1991).

5. It has become apparent that by ruling on the CGSA determination proposal before accepting unserved area applications, we may avoid the potential for years of disruptive and unproductive litigation between unserved area applicants and existing cellular licensees over the disposition of the unserved area applications that would be acceptable under the current CGSA determination method but not the new one.[6] Because we wish to minimize further delay in accepting unserved area applications, we act separately herein on the CGSA determination proposal and other related procedural issues.[7]

NEW CGSA DETERMINATION METHOD

6. The principal objective in this proceeding is to identify areas where cellular service is not being provided, and to accept applications for authority to serve those areas. The Commission has, to this point, required applicants for cellular authorizations to delineate the CGSAs of their proposed systems simply by drawing the boundaries on maps. We required applicants for systems in the MSA markets to specify CGSAs that would cover at least 75% of the area[8] of the desired cellular market. All applicants have been required to propose facilities sufficient to provide at least 75% coverage of the CGSA with a 39 dbμV/m or higher median field strength signal, as predicted using the median field strength curves in the Carey Report.[9] Furthermore, after an authorization is issued, cellular licensees are required to build sufficient cells to provide 75% coverage of the authorized CGSA. The purposes of these "75% coverage rules" are (1) to ensure that applicants plan to operate systems large enough to substantially cover the cellular market for which they will have exclusive rights on their frequency block for five years, and (2) to ensure that licensees build facilities that provide service in a substantial portion of the area within which they are protected from interference and competing systems (i.e., the CGSA). Except for the 75% coverage rules, applicants have been allowed complete freedom to determine the size, shape and locations of their CGSAs. This sometimes leads to

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6 On December 26, 1991, the Common Carrier Bureau issued an order waiving the deadlines for filing updated cellular system information and postponing the acceptance of applications for unserved areas. See Order in CC Docket 90-6, DA 91-1624.

7 The Commission will issue a separate order addressing the proposals concerning limitations on settlement and withdrawal payments and the assignment of cellular authorizations prior to commencement of service.

8 In MSA markets below the top 90, applicants could define CGSAs to cover 75% of the area or 75% of the population of the desired cellular market. For RSA applications, there was no requirement that the CGSA cover a minimum portion of the market.

9 Report No. R-6406, "Technical Factors Affecting the Assignment of Facilities in the Domestic Public Land Mobile Service" by Roger B. Carey.

situations where area remains unserved, but because it is within a CGSA, applications to serve it can not be accepted.[10]

7. To cause CGSAs to resemble more closely the areas actually served, the Commission initially proposed to modify all CGSAs to make them coterminous with the composite outer 39 dBμV/m contours, as predicted by Carey.[11] Comments filed in response to this proposal convinced us that reliable cellular service is routinely provided with a significantly lower field strength, and thus our original proposal would greatly underestimate actual coverage, and result in CGSAs that would be smaller than actual coverage. In the First Report, we declined to adopt this original proposal, and indicated that we would address the issue in the Further Notice. We continue to believe that a simple, yet more realistic method for determining CGSAs is needed.

8. In the Further Notice, we proposed that CGSAs be determined by use of a mathematical formula.[12] The formula yields the radial distance from a cell transmitter site to the boundary of its service area as a function of antenna height above average terrain (HAAT) and effective radiated power (ERP). The service area of the cell is the area within this service area boundary.[13] The CGSA is the composite of the service areas of all the cells in the system, with certain exclusions.[14] We believe that the use of this formula will simplify and remove a measure of uncertainty from the process of calculating and plotting CGSAs.[15] Also, by specifying the CGSA in terms of distance from cell site to

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10 Area within a CGSA may remain unserved because the licensee did not expand the system to that point within the five year fill-in period or because the licensee finds it uneconomic to serve it, and/or does not intend to expand coverage to that area.

11 The Carey Report specifies that reliable two-way mobile service is provided in the UHF frequency range when the median field strength is 39 dBμV/m or higher. However, the Carey Report is based on the equipment and technical standards that were in use in the 1960's.

12 The formula is contained in new §22.903(a)(1) in Appendix B. An alternative formula for use over seawater in the Gulf of Mexico was also proposed. However, action on that proposal is being deferred in response to a request by the Gulf of Mexico MSA licensee for additional time to study propagation in the Gulf. Applications for unserved areas in the Gulf of Mexico MSA will not be accepted until the Commission acts.

13 The service area boundary will serve the same purposes that the 39 dBμV/m contour has heretofore.

14 See new §22.903(c) in Appendix B.

15 The use of curves plotted on graph paper as a standard always presents the potential for differing readings or interpolations, as these are subject to the limits of visual acuity and are necessarily subjective. Standard formulas, by contrast, always yield the same results.

service area boundary, rather than as the area within a field strength contour,[16] we hope to avoid generally unproductive disagreements between parties and the Commission over whether one method of ascertaining the median field strength (such as Carey) is more or less "accurate" than another for a particular location or terrain.[17]

9. Within the range of antenna height and power typical for cellular facilities, the formula we proposed closely tracks the median field strength curves in the Carey Report. We calculated the constant factor to approximate a median field strength of 32 dBμV/m because that value has been an informal cellular industry standard for reliable service and the handoff threshold.[18] However, we requested comment as to whether a different constant factor would be more appropriate, and indicated that the proposed formula could be adjusted to provide distances approximating other field strengths.[19]

10. There is general agreement among the commenters that the formula approach is beneficial and represents as good a measure of cellular system coverage as any other model available for public use.[20] The majority of commenters support adoption of the constant factor we proposed for general cellular coverage.[21] Douglas A. Kerr, P.E. ("Kerr") points out that, unless

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16 A field strength contour is the locus of points surrounding a transmitting antenna where the field strength is a specific predicted or measured value.

17 The nature of electromagnetic propagation is such that relatively insignificant differences in signal strength can correspond to rather large differences in distance from a transmitting antenna.

18 Two of the comments filed in response to the Further Notice contain mathematical analyses, using somewhat different approaches, which confirm that the most appropriate field strength to constitute reliable cellular service is 32 dBμV/m. See comments of Pactel Cellular, at Attachment 1, and comments of Comp Com, Inc., at Appendix A.

19 Specifically, the constant factor can be adjusted to represent other field strengths while maintaining agreement with the Carey curves. See Further Notice at 5, paragraph 9 and 7, paragraph 12.

20 Comments of CTIA at 3, McCaw at 9, Centel at 3. But see also comments of CNet, Inc. at 4, describing the proposed formulas as flawed. CNet markets a proprietary cellular propagation computer program.

21 Pactel Cellular submitted alternative constant factors and exponents (the "Lee formula") that it believes should be adopted rather than those proposed. According to Pactel, the Lee formula is based on field strength measurement data for suburban Sacramento, California. In reply comments, some parties express a preference for the Lee formula, while others continue to support adoption of the proposed formula. The Mobile Services Division staff compared the Lee formula with the proposed formula and found that use of the former would result in much larger CGSAs. Pactel's showing appears

(continued...)

limits are set on the height and power values used in the formula, meaningless, misleading or erroneous results could occur.[22] New Par proposed a dual contour approach using both the existing 39 dBμV/m contours and new 32 dBμV/m contours.[23] Throughout the comments and replies, there was one common thread of concern about the formula -- virtually all of the commenters requested that in those "relatively few places where terrain and other unique circumstances affect propagation,"[24] the Commission accept alternative coverage showings in lieu of the general use formula.[25]

11. We adopt the formula essentially as proposed (see new §22.903). We also set minimum limits on the height and power values that are used in the formulas, as suggested by Kerr. For height above average terrain, we set a minimum value of 100 feet, which has been a standard engineering practice used with Carey procedures for many years.[26] In regard to power, we specify a minimum ERP value of 0.1 Watt or 27 dB below the maximum ERP, whichever is more in a given situation.[27] Although we continue to require the submission of maps depicting CGSAs, the position of the CGSA boundaries will be officially determined by the geographical coordinates of cell sites and the authorized

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21(...continued)
to indicate that the proposed formula may underpredict coverage in Sacramento, but the Commission can not conclude from this filing that the Lee formula is a more appropriate measure of coverage for use throughout the entire United States.

22 Comments of Kerr at 3.

23 Comments of New Par at 3. The Commission believes that the administrative complexity of this suggested dual contour method outweighs any benefits it might have.

24 Comments of CTIA at 3.

25 Comments of Bellsouth Corporation at 5, Nynex Mobile Communications Company at 4, US West Newvector Group, Inc. at 4.

26 The Carey field strength curves were derived from CCIR curves based upon a transmitting antenna height of 150 meters (492 feet) over terrain having a roughness of Δh=50 meters (Δh=164 feet). With an antenna height above average terrain (HAAT) of less than 100 feet, variations in terrain features and roughness can be expected to have a larger effect on path loss than at higher HAATs. Thus for heights below 100 feet, data extrapolated from the Carey curves may not be valid.

27 These minimum limits, in addition to preventing the formula from producing misleading results, will discourage applications proposing systems with extreme technical design parameters which, in all likelihood, could not be met or maintained in the field.

distances from these cell sites contained in the Commission's station files.[28] As requested by many of the commenters, we amend the rules for coverage maps submitted with cellular filings.[29] The revised rules require only that the CGSA boundary and cell sites be plotted. Service area boundaries of individual cells that do not constitute a portion of the CGSA boundary need not be plotted. Of course, it will no longer be required that 39 dBμV/m contours be plotted on maps. These changes should eliminate the problem, cited by the commenters, of excessively cluttered maps for cellular systems in densely populated urban areas.

12. We agree with the commenters that in some areas the formula approach may produce a CGSA that differs from the area where actual service is provided, and that some continued flexibility is warranted. Accordingly, we are retaining in §22.903 a paragraph allowing alternative coverage showings.[30] If, after consideration of an alternative showing, we find adjustment of the CGSA boundary is warranted, we will so order.[31] However, we do not envision routinely determining the boundaries of CGSAs on the basis of alternative showings. We will consider alternative coverage showings only when the change to the CGSA is substantial and justified by unique or unusual circumstances, or where the formula approach is clearly inapplicable. This limitation is necessary to prevent an excessive number of alternative coverage showings which could slow down our processing and thus delay service to the public, particularly in situations where there is little benefit in deviating from the formula approach. As examples, we would consider alternative coverage showings in the following circumstances:

a) when a substantial portion of the CGSA boundary is determined by the service area boundaries of microcells, because the formula

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28 Points on the service area boundary of each cell are established by calculating the distance from the cell site to the service area boundary in eight azimuths, which are 0°, 45°, 90°, 135°, 180°, 225°, 270° and 315° with respect to true North. Other points on the service area boundary are determined by linear interpolation of distance as a function of angle between the eight azimuths. Generally, HAAT values determined and submitted by applicants will be accepted as correct, however, in cases of dispute, the Commission may determine HAAT values.

29 See new §22.924 and §22.925 in Appendix B.

30 Unlike the formula the Commission is adopting, some alternative coverage methods predict or measure field strength at points within a CGSA. Such methods may reveal "dead spots". Dead spots are small areas within a CGSA where the field strength is lower than the minimum level specified for reliable service. As requested by the commenters, revised §22.903(b) explicitly states that dead spots are part of the CGSA and that service within them is presumed. Accordingly, the Commission will not accept unserved area applications for dead spots.

31 If after consideration of an alternative coverage showing, the Commission finds that no adjustment is warranted, the CGSA will be determined using the formula method.

does not take into account any special propagation characteristics of microcells;[32]

b) when the service area as measured or predicted by the alternative method would be at least 20% larger or smaller than that determined by the formula method (1) because the terrain roughness[33] in the area in question departs substantially from Δh=50 meters,[34] or (2) because of blocking due to terrain features.

13. In the notices in this proceeding, we requested comments on when the new method for determining CGSAs should apply to existing systems. It is clear from the record that the majority of the commenters strongly believe that the new method must be in place before any unserved area applications are filed. After careful consideration of the possible confusion, litigation and other ramifications that could result of maintaining two methods for determining CGSAs, we agree with the commenters on this point. Consequently, the formula method of determining CGSAs for all currently licensed systems, except for those in the Gulf of Mexico MSA, must be put into use promptly to avoid further delay in the filing of unserved area applications. Therefore, the rules adopted herein will be effective 90 days after publication of this Second Report and Order in the Federal Register.[35]

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32 For this purpose, a microcell is a cell where the distance to the service area boundary, as calculated by the new formula, does not exceed 5 miles in any azimuth.

33 See §73.313(f)-(j) of the Commission's rules, 47 CFR 73.313(f)-(j), for additional information on determining terrain roughness.

34 The formula tracks the propagation curves in the Carey Report. These curves are based on a terrain roughness of Δh=50 meters, which is considered to be representative of average terrain in the United States.

35 All authorized extensions remain authorized. Case law guidelines for service area boundary de minimis extensions will be applied as adjusted for the new formula. Extensions will be bounded by the service area boundary determined using the new formula, rather than the 39 dBμV/m contour previously used. The distance to the service area boundary determined using the new formula is 31% greater than the distance to the 39 dBμV/m contour. Any new service area boundary extensions created solely by this change are considered de minimis and are hereby authorized. For original systems in MSAs where the Commission authorized CGSA extensions, the CGSA extension boundary does not change as a result of this order.

CGSA EXPANSION WITHOUT PRIOR AUTHORIZATION

14. In the Further Notice, we proposed to allow cellular licensees to expand their CGSAs within their markets during the five year fill-in period without prior authorization, subject to certain limits and notification procedures.[36] Currently, any expansion of a CGSA, even within the market during the five year fill-in period, is considered to be a major modification, requiring the filing of an FCC Form 401 application, public notice procedures and prior approval. All commenters support the proposed change.[37]

15. Our decision herein to adopt our proposal to allow CGSA expansion within the market during the five year period without prior approval will significantly decrease the number of major applications that must be filed and processed, avoiding unnecessary delays in expansion of cellular service. Therefore, we amend Sections 22.9, 22.913 and 22.923 accordingly. Licensees will be required to notify the Commission of additional or modified cells by filing FCC Form 489, as is now required for additions or modifications that do not change the CGSA.

FILING DATES

16. In view of our decisions in this Second Report and Order, we are changing the date on which updated system information must be filed for cellular systems for which the five year fill-in period has already expired or will expire on or before the date 150 days after publication of this Second Report and Order in the Federal Register. The new date for filing updated system information for these markets is the date 90 days after publication of this Second Report and Order in the Federal Register. The date of the window for filing Phase I applications for authority to construct and operate new cellular systems for unserved areas in these markets will be announced by Public Notice.

17. Applications for authority to construct and operate new cellular systems in unserved areas, in both Phase I and Phase II, must be filed at the Commission's lockbox bank in Pittsburgh, Pennsylvania. In accordance with existing Commission policy, unserved area cellular applications in both Phase I or Phase II will not be accepted under the special procedure allowing unofficial copies to be filed at the Commission's Washington, DC office.[38] Phase I applications must be filed in Pittsburgh on the filing window day or they will be considered untimely filed. Phase II applications, which will be processed on

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36 See Further Notice at 9, Section IV.

37 For example, see CTIA at 7.

38 The special procedure allows unofficial copies of applications, together with evidence of timely shipment to Pittsburgh, to be submitted and date stamped at the Commission's Washington, DC office. See Memorandum Opinion and Order, Gen. Docket No. 86-285, FCC 90-163, 5 FCC Rcd 3558 (1990), at 8, paragraph 14.

a first-come, first-served basis, will be considered to have been received on the day on which they are filed in Pittsburgh.

18. To avoid confusion as to when the Phase I and Phase II filing windows will begin in the MSAs and RSAs, we are clarifying how the dates for the end of a five year fill-in period (and the start of Phase I and Phase II) are determined. The five year fill-in period for a frequency block in a market ends on the same month and day as the date that the initial construction authorization was granted, but five years later. The first day counting toward the 31st day (on which Phase I begins) is the next day, regardless of whether it is a holiday.[39] However, the filing day for the Phase I window must be on a business day. Therefore, if the 31st day is a holiday, Phase I begins on the next business day thereafter.

19. For example, consider a cellular system for which an initial construction authorization was granted on September 9, 1987. The five year fill-in period ends on September 9, 1992. The system information update is due 60 days before the fill-in period expires - on July 11, 1992, but that is a Saturday. Consequently the system information update must be filed on July 13, 1992, which is the next business day. The first day counting toward the Phase I filing window is September 10, 1992. The 31st day is October 10, 1992, but that is also a Saturday. Furthermore, Monday, October 12, 1992 is a holiday. Therefore, the one-day Phase I filing window for this example is the next business day, Tuesday, October 13, 1992.

20. Phase II begins on the 121st day after the Phase I construction authorization is granted.[40] The first day counting toward the 121st day (on which Phase II begins) is the day after the Phase I construction authorization is granted, regardless of whether it is a holiday. However, the Phase II window must begin on a business day. Therefore, if the 121st day is a holiday, Phase II begins on the next business day thereafter.

ORDERING CLAUSES

21. Authority for the rule amendments adopted herein is contained in Sections 4(i) and (j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j) and 303(r).

22. IT IS ORDERED That Part 22 of the Commission's Rules and Regulations IS AMENDED as set forth in the attached Appendix, effective 90 days after publication of this Second Report and Order in the Federal Register.

23. IT IS FURTHER ORDERED That the date 90 days after publication of this Second Report and Order in the Federal Register IS SET as the date for filing the

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39 See Section 1.4(e)(1) of the Commission's rules, 47 CFR 1.4(e)(1), for the definition of a "holiday" for this purpose.

40 If there are no Phase I applications, Phase II begins the day after the Phase I filing window.

required system information update for cellular systems in markets where the five year fill-in period has already expired or will expire on or before the date 150 days after publication of this Second Report and Order in the Federal Register.

24. IT IS FURTHER ORDERED That the cellular geographic service areas of all authorized cellular systems except those in the Gulf of Mexico MSA ARE MODIFIED as necessary to conform to the new CGSA determination method adopted herein, effective 90 days after publication of this Second Report and Order in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

Parties Commenting on Further Notice of Proposed Rule Making

Ameritech Mobile Communications, Inc.
Applicants Against Lottery Abuses
Bell Atlantic Mobile Systems, Inc.
BellSouth Corporation
Cellular Telecommunications Industry Association
Centel Cellular Company
CNet, Inc.
Committee for Effective Cellular Rules
Comp Comm, Inc.
Kerr, Douglas A., P.E.
McCaw Cellular Communications, Inc.
New Par
NYNEX Mobile Communications Company
Pactel Cellular
PMN, Inc.
Quantum Communications Group, Inc.
Rochester Telephone Mobile Communications
Rural Cellular Telephone Coalition
Southwestern Bell Mobile Systems, Inc.
U S WEST NewVector Group, Inc.

Parties filing Reply Comments

ALLTEL Mobile Communications, Inc.
Applicants Against Lottery Abuses
Cellular Telecommunications Industry Association
Centel Cellular Company
Committee for Effective Cellular Rules
Comp Comm, Inc.
JAJ Cellular
McCaw Cellular Communications, Inc.
New Par
NYNEX Mobile Communications Company
PacTel Cellular
Petroleum Communications, Inc.
PMN, Inc.
Quantum Communications Group, Inc.
RVC Services, Inc.
Telocator

APPENDIX B

Final Rules

Part 22 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 22 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1083, as amended; 47 U.S.C. 154, 303.

2. In Section 22.6, paragraph (b)(2)(ii) is removed and reserved.

3. Section 22.9 is amended by revising paragraph (d)(7)(ii) and adding a new paragraph (d)(7)(iii) to read as follows:

§22.9 Standard application forms and permissive changes or minor modifications for the public mobile service.

* * * * *

(d) * * *

(7) * * *

(ii) A change to or addition of a cell site, provided that the CGSA is unchanged.

(iii) A change to or addition of a cell site during the five year fill-in period, provided that the service area boundary, determined in accordance with §22.903(a), does not thereby extend outside of the RSA or MSA, except in accordance with a contract pursuant to §22.903(d)(2).

4. Section 22.23 is amended by revising the introductory text of paragraph (c)(3) and adding new paragraphs (i) and (ii), to read as follows:

§22.23 Amendment of applications. (See also §22.918)

* * * * *

(c) * * *

(3) In the Domestic Public Cellular Radio Telecommunications Service, if the amendment would:

(i) extend the service area boundary as proposed in the application outside of the RSA or MSA, except in accordance with a contract pursuant to §22.903(d)(2); or,

(ii) after the five year fill-in period, increase the Cellular Geographic Service Area (CGSA) beyond that proposed in the application.

* * * * *

5. In Section 22.43, paragraph (c)(1), remove the following phrase: ", in markets 1-90,".

6. Section 22.43 is amended by removing paragraphs (d)(1)(vi), (d)(1)(vii) and (d)(1)(viii) and by revising (d)(3)(vi) to read as follows:

§22.43 Period of construction.

* * * * *

(d) * * *

(3) * * *

(vi) For cellular applicants (or tentative selectees) the proposed facility's 39 dBμ contour will extend into Mexico. For the purpose of this paragraph, the distance to the 39 dBμ contour is deemed to be equal to 76% of the distance to the service area boundary as defined in §22.903.

* * * * *

7. Section 22.117 is amended by removing the last sentence in paragraph (b)(1), which currently reads "Cellular licensees certify that the 39 dBu contours of each cell remain within the CGSA."

8. In Section 22.902, remove the words "Section 22.903(f)" every place they occur and add, in their place, the word "§22.903".

9. In Section 22.902, paragraph (d)(4), remove the words "39 dBu contour" every place they occur and add, in their place, the words "service area boundary".

10. Section 22.903 is revised in its entirety to read as follows:

§22.903 Cellular geographic service area.

The Cellular Geographic Service Area (CGSA) of a cellular system is the geographic area considered by the Commission to be served by the cellular system. The CGSA is the area within which cellular systems are entitled to protection and within which adverse effects for the purpose of determining whether a petitioner has standing are recognized.

(a) CGSA determination. The CGSA is the composite of the service areas of all of the cells in the system, excluding any area outside the MSA or RSA boundary, except as provided in paragraph (c) of this section, and excluding any area within the CGSA of another cellular system. The service area of a cell is the area within its service area boundary. The distance to the service area boundary is calculated as a function of effective radiated power (ERP) and antenna center of radiation height above average terrain (HAAT).

(1) The radial distance from a cell transmitting antenna to its service area boundary is calculated as follows:

$$d = 1.05 \times h^{0.34} \times p^{0.17}$$

where d is the radial distance in miles
h is the radial antenna HAAT in feet
p is the radial ERP in Watts

(2) [reserved]

(3) Where the actual HAAT is less than 100 feet, 100 must be used as the value for h in the formula in paragraph (a)(1) of this section.

(4) The value used for p in the formula in paragraph (a)(1) of this section must not be less than 0.1 Watt or 27 dB below (1/500 of) the maximum ERP in any direction, whichever is more.

(b) Alternative CGSA determination. If a carrier believes that the method prescribed in paragraph (a) of this section produces a CGSA that departs significantly from the geographical area where reliable cellular service is actually provided, the carrier may submit for the Commission's consideration a depiction of what the carrier believes the CGSA should be. Such submissions must be accompanied by one or more supporting propagation studies using methods appropriate for the 800-900 MHz frequency range, including all supporting data and calculations, and/or by extensive field strength measurement data. For the purpose of such submissions, cellular service is considered to be provided in all areas, including "dead spots", between the transmitter location and the locus of points where the predicted or measured median field strength finally drops to 32 dBμ (i.e. does not exceed 32 dBμ further out). If, after consideration of such submissions, the Commission finds that adjustment to a CGSA is warranted, the Commission may so order.

(c) CGSA extension areas. Areas outside of the MSA or RSA boundary, but within the service area as calculated using the method of paragraph (a) of this section, are part of the CGSA only under the following circumstances:

(1) During the five year fill-in period of the system in the MSA or RSA containing the extension, the licensees of systems on the same frequency block in adjacent MSAs or RSAs may agree that the portion of the service area of one system that extends into unserved area in the other system's MSA or RSA is part of the CGSA of the former system.

(2) At the end of the five year fill-in period of the system in the MSA or RSA containing the extension, the portion of the service area that extends into unserved area in another MSA or RSA becomes part of the CGSA, provided that the licensee of the system so extended files a system information update in accordance with §22.925.

(3) For original systems in MSAs, extensions of the CGSA authorized by the Commission are part of the CGSA to the extent authorized.

(d) Service area boundary extensions. Cellular systems must be designed to comply with the requirements of this paragraph. Applications that fail to comply with these requirements are defective. The service area boundaries of cells may extend into adjacent MSAs or RSAs only under the following circumstances:

(1) De minimis extensions. Service area boundaries may extend into adjacent MSAs or RSAs if such extensions are de minimis and are demonstrably unavoidable for technical reasons of sound engineering design. See paragraph (d)(3)(ii) of this section for additional requirements applicable only to unserved area systems.

(2) Contract extensions. Licensees of the first authorized cellular systems on the same frequency block in adjacent MSA or RSAs may enter into contracts to allow service area boundary extensions into their MSAs or RSAs during the five year fill-in period of the MSA or RSA into which the service area extends.

(3) Unserved area system extensions. Cellular systems proposed for unserved areas must be designed to comply with the requirements of this paragraph.

(i) The service area boundaries of the cells must not extend into the CGSA of any other licensee's cellular system on the same frequency block or into any adjacent MSA or RSA where the five year fill-in period has expired.

(ii) The service area boundaries of the cells must not extend beyond the boundary of the MSA or RSA, except as provided in paragraphs (d)(3)(iii) and (d)(3)(iv) of this section. However, the Commission may authorize upon request for a waiver of this prohibition (pursuant to §22.19), de minimis extensions of the service area boundaries beyond the MSA or RSA boundary, provided that the system is designed to serve only areas within the CGSA, the extensions are unavoidable because of irregular terrain or unusual MSA or RSA boundaries and the extensions are into an MSA or RSA on a frequency block for which the five year fill-in period has not elapsed. Applications containing such a waiver request must also contain an alternative proposal without extensions. During the remainder of such five year fill-in period, systems authorized with de minimis extensions pursuant to waiver must accept any interference from and not cause any interference to the MSA or RSA system (in the de minimis extension area). Area within de minimis extensions does not count toward the minimum coverage requirement of §22.924.

(iii) The service area boundaries of the cells may extend into a market for which the five year fill-in period has not elapsed in accordance with a contract with the licensee of the system on the relevant frequency block in that market, pursuant to paragraph (d)(2) of this section. Area within contract extensions counts toward the minimum coverage requirement of §22.924.

(iv) Licensees in markets for which the five year fill-in period has not elapsed may apply for an area that includes both unserved area in an adjacent market and area within their market.

11. Section 22.913 is amended by revising the heading, the introductory text of paragraph (a) and paragraph (d) to read as follows:

§22.913 Content and form of MSA applications.

(a) Contents. Applications for new stations, and applications for or notifications of modified facilities expanding the CGSA of existing stations must contain the following exhibits:

* * * * *

(d) During the five year fill-in period, licensees may, pursuant to §22.117(b), notify the Commission (using FCC Form 489) of facilities modifications that do not extend the CGSA outside of the MSA boundary, except those in accordance with a contract pursuant to §22.903(d)(2). Otherwise, licensees must apply for authority to modify facilities, using FCC Form 401.

12. In Section 22.918, paragraph (c)(1), remove the words "39dBu contours" and add, in their place, the words "service area boundaries".

13. In Section 22.923, paragraph (a)(1), remove the words "Boundaries of the RSA, CGSA(s), and 39 dBu contours must be clearly indicated. required by §22.903(a).".

14. Section 22.923 is amended by revising the heading, the introductory text of paragraph (a) and paragraph (c), and by removing paragraph (c)(1), to read as follows:

§22.923 Content and form of RSA applications.

(a) Applications for new stations, and applications for or notifications of modified facilities expanding the CGSA of existing stations must contain the following exhibits:

* * * * *

(c) During the five year fill-in period, licensees may, pursuant to §22.117(b), notify the Commission (using FCC Form 489) of facilities modifications that do not extend the CGSA outside of the RSA boundary, except those in accordance with a contract pursuant to §22.903(d)(2). Otherwise, licensees must apply for authority to modify facilities, using FCC Form 401.

15. In Section 22.924, paragraphs (b)(1)(i) and (b)(2)(i) are amended by removing the words "39 dBu contours" every place they occur and adding, in their place, the words "service area boundaries of the cell(s)".

16. In Section 22.924, paragraph (b)(3) is amended by removing the last sentence, which currently reads "See Section 22.903(c).".

17. Section 22.924 is amended by revising the heading and the text of paragraph (c)(3) to read as follows:

§22.924 Content and form of applications for unserved areas.

* * * * *

(c) * * *

(3) Each application must propose one and only one CGSA.

* * * * *

18. Section 22.925 is revised in its entirety to read as follows:

§22.925 System information update.

Sixty days before the end of the five year fill-in period, the licensee of the each cellular system authorized on each channel block in each cellular market must file, in triplicate, a full scale map, a reduced map, and an updated frequency utilization chart. These maps and chart must accurately depict the cell locations and coverage of the system at the end of the five year fill-in period. The maps and chart must be filed at the Mobile Services Division, Common Carrier Bureau, Federal Communications Commission, Washington, DC 20554. If any changes to the system occur after the filing of these maps and chart, but before the end of the five year fill-in period, the licensee must file, in triplicate, additional maps and/or charts as necessary to insure that the cell locations and coverage of the system as of the end of the five year fill-in period are accurately depicted.

(a) The scale of the full-size map must be 1:250,000, regardless of whether any different scale is used for the reduced map. The map must have a legend, a distance scale and correctly labeled latitude and longitude lines. The map must be clear and legible. The map must accurately show the cell sites (transmitting antenna locations), the entire CGSA, any extension of the composite service area boundary beyond the CGSA and the relevant portions of

the cellular market boundary. The date the map was initially drawn or revised must appear on the map.

(b) The reduced map must be a proportional reduction, to 8½ × 11 inches, of the full-size map required in paragraph (a) of this section, unless it proves to be impractical to depict the entire cellular market by reducing the full-size map. In such instance, an 8½ × 11 inch map of a different scale may be substituted, provided that the required features of the full-size map are clearly depicted and labeled.

19. Section 22.926 is revised in its entirety, to read as follows:

§22.926 Maps.

Maps required to be filed by rules in Subpart K of this part must meet the requirements of this section. Maps on a scale of 1:250,000 must be submitted in duplicate, except for system information update maps required by §22.925, which must be submitted in triplicate. Maps must be submitted for each market into which the CGSA extends, even if de minimis, showing the extension area in the adjacent market, marked and labeled for the adjacent market. Maps must be clear and legible, and must:

(a) be on a scale of 1:250,000, except as otherwise provided in this part;

(b) include an effective date (the date when the CGSA and cell site depictions were drawn on the map by the cellular carrier), to be used to determine, when several maps for a system are on file at the Commission, which map is the most recent;

(c) have the scale, latitude and longitude clearly indicated;

(d) have a clear legend identifying the CGSA, the MSA or RSA boundary, any service area boundaries, and any other features relevant to the cellular system;

(e) show the entire CGSA and the entire MSA or RSA or relevant portions thereof, and the composite outer service area boundary, in any portions where the CGSA deviates from it;

(f) have all cell sites plotted.

20. Section 22.930 is amended by revising paragraph (d) to read as follows:

§22.930 Special provisions for alternative cellular technologies and auxiliary services.

* * * * *

(d) The CGSA of cellular systems is determined on the basis of cellular facilities only (see §22.903). Furthermore, the service areas of auxiliary service facilities must be totally contained within the CGSA. Service area of auxiliary service facilities does not count toward the construction requirement of §22.43(c).

* * * * *

APPENDIX C

Final Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need and purpose of this action.

In this Second Report and Order, the Federal Communications Commission adopts a new method for determining the geographic areas in which the service of cellular systems is protected (the cellular geographic service area or CGSA). The CGSAs of all existing systems are modified to conform to the new method. Additionally, the Commission is simplifying the licensing process for expanding cellular system coverage within the market during a five-year period after initial authorization of the system. Under the new rules, such expansions may be done without the prior approval of the Commission. The purpose of this action is to encourage the further development and expansion of cellular mobile telephone service in the United States. The action is necessary to facilitate the processing of applications to construct and operate new cellular systems in remaining areas of the country without cellular service.

II. Summary of the issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis.

The public comments in this proceeding did not address regulatory flexibility issues specifically.

III. Significant alternatives considered.

The Commission considered variations of the CGSA determination method adopted herein, and found the adopted method to be superior to the alternatives considered and appropriate for the purpose intended. The comments received in this proceeding, principally from affected parties, generally support the actions taken herein. Enhancements and clarifications suggested by the commenters were considered, and some were adopted.

*U.S. Government Printing Office: 1992 — 312-024/60016